United Nations S/PV.6227

# Security Council

Sixty-fourth year

*Provisional*

**6227**th meeting

Monday, 30 November 2009, 10.30 a.m.

New York

| | | |
|---|---|---|
| *President*: | Mr. Ebner | (Austria) |
| *Members*: | Burkina Faso | Mr. Kafando |
| | China | Mr. Liu Zhenmin |
| | Costa Rica | Mr. Urbina |
| | Croatia | Mr. Vilović |
| | France | Mr. Araud |
| | Japan | Mr. Takasu |
| | Libyan Arab Jamahiriya | Mr. Dabbashi |
| | Mexico | Mr. Heller |
| | Russian Federation | Mr. Dolgov |
| | Turkey | Mr. Apakan |
| | Uganda | Mr. Rugunda |
| | United Kingdom of Great Britain and Northern Ireland | Sir Mark Lyall Grant |
| | United States of America | Ms. Rice |
| | Viet Nam | Mr. Le Luong Minh |

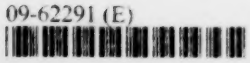
## Agenda

Reports of the Secretary-General on the Sudan

Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur (UNAMID) (S/2009/592)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-506.

09-62291 (E)



Please recycle

*The meeting was called to order at 10.30 a.m.*

**Adoption of the agenda**

*The agenda was adopted.*

**Reports of the Secretary-General on the Sudan**

**Report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur (UNAMID) (S/2009/592)**

**The President**: I should like to inform the Council that I have received a letter from the representative of the Sudan in which he requests to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice I propose, with the consent of the Council, to invite that representative to participate in the consideration of the item without the right to vote, in accordance with relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

*At the invitation of the President, Mr. Mohamad (Sudan) took a seat at the Council table.*

**The President**: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend invitations under rule 39 of its provisional rules of procedure to Mr. Edmond Mulet, Assistant Secretary-General for Peacekeeping Operations, and Mr. Djibril Bassolé, Joint African Union-United Nations Chief Mediator for Darfur.

It is so decided.

I invite Mr. Mulet to take a seat at the Council table.

I invite Mr. Bassolé to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

I wish to draw the attention of the members to document S/2009/592, containing the report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur.

At this meeting the Security Council will hear briefings by Mr. Edmond Mulet and Mr. Djibril Bassolé. I now give the floor to Mr. Mulet.

**Mr. Mulet** (*spoke in French*): I thank you, Mr. President, for giving me the opportunity to brief the Security Council on the security situation in Darfur as well as on the national political and electoral environment, following the issuance of Secretary-General's report of 16 November (S/2009/592). My briefing will also provide an overview of the actions that are required to implement the objectives of the African Union-United Nations Hybrid Operation in Darfur (UNAMID). Afterwards, the Joint Chief Mediator, Mr. Djibril Bassolé, will provide a complete update on the political process and the efforts of the Mediation to facilitate a political solution in Darfur.

The security situation in Darfur remains unstable. Carjackings and attacks against humanitarian workers have not stopped, and we remain extremely concerned by the fate of two UNAMID employees who were kidnapped in Zalingue 94 days ago. Furthermore, the beginning of a new round of peace talks in Doha on 17 November coincided with an increase in fighting on the ground. That same day, 17 November, in Southern Darfur, combatants affiliated with the Sudan Liberation Army (SLA)/Minni Minawi faction attacked two villages close to Neghea, killing 11 people. On 19 November, the Sudanese Armed Forces reported the deaths of 29 soldiers in an ambush in Sindy, in Northern Darfur, allegedly orchestrated by the rebels belonging to the SLA/Abdul Shafi faction, but for which responsibility was also claimed by the SLA/Abdul Wahid faction. In the same period, UNAMID also reported clashes between SLA/Abdul Shafi and SLA/Abdul Wahid in the Jebel Marra in Western Darfur. These attacks are unacceptable and clearly show — if proof were needed — that the fragmentation of Darfurian rebel movements remains a reality, with obvious consequences for the Mediation and the peace process.

Lastly, as indicated in the Secretary-General's report, over the past three months, UNAMID has had to face significant obstacles to its freedom of movement. Given the extent of the problem, these were brought to the attention of senior Sudanese officials during discussions in New York on 28 September. The Under-Secretary-General for Peacekeeping Operations, Mr. Alain Le Roy, then sent a detailed list of incidents to the Permanent Mission of the Sudan to the United

Nations on 14 October. We are determined to resolve this problem in cooperation with the Sudanese authorities, and we will continue to raise this matter with them in an open and transparent fashion.

It goes without saying that the rebel movements must be held to the same obligations. In mid-November, SLA/Abdul Wahid repeatedly denied UNAMID access to the zones under its control in Northern Darfur and the Jebel Marra area, notably in Sortony and Deribat. That is why the armed movements must be asked to make similar commitments to ensure freedom of movement for UNAMID in the zones under their control if we want the Mission to succeed in its effort to help the parties restore full peace and stability. UNAMID will continue to work with the Government as well as with the movements in pursuing this objective, but it is clear that we will need the support of Security Council members in this undertaking.

(*spoke in English*)

In the national political context, the Government of the Sudan is carrying out registration for the national elections, scheduled to take place in April 2010. As foreseen in the Comprehensive Peace Agreement (CPA), national elections can play a significant role in building national unity and democratization in the Sudan. To date, significant challenges remain with regard to preparations, including agreement on the census results, clarification of constituency delimitation and completion of the registration process. A transparent and meaningful debate must also take place with regard to what is required to hold inclusive elections in Darfur. To date, a number of Darfur groups, including internally displaced persons and the movements — the Justice and Equality Movement and the SLA/Abdul Wahid — continue to express concerns about the holding of elections before the conclusion of a peace agreement.

In this connection, the start of elections registration on 1 November led to heightened tensions in some areas of Darfur. On 9 November, SLA faction leaders threatened to attack election registration officials who attempted to enter territory they control. On 18 November, assailants attempted to force their way into a voter registration team accommodation near Mornei in Western Darfur. We are investigating these reports, which describe an unacceptable threat to the electoral process in the Sudan. UNAMID is also working to disseminate a strong message that no group has a right to use violence to disrupt preparations for the elections. We must demand more both of partners in the Government of National Unity and of the Darfur movements in addressing outstanding political and technical issues associated with the elections, with a view to ensuring that they meet the objectives set down in the CPA.

The release of the report of the African Union High-Level Panel on Darfur chaired by President Mbeki represents another major political development for the Sudan. As the Council is aware, the recommendations of the report were endorsed in a 29 October communiqué issued by a summit-level meeting of the African Union Peace and Security Council. In the meantime, we are preparing for forthcoming discussions with the African Union on the next steps.

With regard to the peace process, Joint Chief Mediator Bassolé will provide you with a detailed update on the positions of the parties and his mediation efforts. From our perspective, with the pressure and urgency of the electoral time frame in mind, Mr. Bassolé has been working for over a year to facilitate the resumption of direct talks between the Government and the armed movements, with civil society consultations alongside those talks. In the meantime, the Government and the movements must demonstrate a readiness to give up completely the military option.

In our view, the Sudanese know what they have to do, and the report of President Mbeki's panel highlights the issues that need to be addressed: power-sharing, wealth-sharing, security and compensation. Considerable progress needs to be made on those issues in the coming months in order for the elections to be meaningful in Darfur. If progress is not made, the holding of elections could have significant implications for peace. The challenge for this Council, for the United Nations and for the African Union, is therefore how best to assist the parties in achieving a political solution that addresses these issues.

The report before the Council describes a set of concrete benchmarks and indicators for measuring progress towards the achievement of UNAMID's mandate. Progress in all four areas is long overdue for the people of Darfur: the achievement of a comprehensive political solution; the establishment of

a secure and stable environment; enhancement of the rule of law and a stabilized humanitarian situation. Among the Mission's mandated activities and the efforts of the United Nations in Darfur, none are as important as those aimed at achieving a comprehensive political solution to end Darfur's marginalization and to enable its rightful representation in the national political process.

**The President**: I thank Mr. Mulet for his briefing.

I now give the floor to Mr. Bassolé.

**Mr. Bassolé**: I would like to thank the Council for the constant support that it has have given to the Darfur peace process. Thank you also for this opportunity given to me, as the Joint African Union Chief Mediator, to update the Council on the current state of the process, whose objectives are the establishment of a comprehensive political peace agreement and a popular consensus of opinion to support it.

I would like to start by praising the large majority of Sudanese actors for their engagement in the process of dialogue to find an end to this crisis. Unfortunately, the belligerents' current lack of confidence in each other makes for slow progress in the peace talks and in achieving an end to military hostilities.

On 18 November 2009 in Doha, the Mediation, in partnership with the State of Qatar, launched the Darfur peace talks in the presence of the representatives of all of the different communities living in Darfur, as well as of women's groups, the youth and internally displaced persons. Representatives from the Government of National Unity and the armed movements also attended.

Allow me to thank His Highness the Amir of Qatar and his Government for all the efforts that they have made, diplomatically and organizationally, to make the peace process successful. I would also like to thank Mr. Amre Moussa, Secretary General of the League of Arab States, for his unfailing support. Together, the League of Arab States and the African Union have sponsored the initiative, spearheaded by Qatar, which is supporting the Mediation.

The inclusive peace talks that we have just commenced will include both a dialogue between the different parts of Darfurian society and direct negotiations between the belligerent parties. The aims are to find a comprehensive resolution of the underlying causes of crisis, to overcome inter-communal hatreds caused by war and to accelerate socio-economic development. Civil society, as well as the principal belligerents, must address the central issues, which include: the socio-economic reintegration of displaced persons and refugees; the promotion of human rights and human security; the fight against poverty and marginalization; the end of military hostilities and political and security arrangements; the 2010 elections and democratic good governance; the resolution of land disputes; and compensation, reconciliation and justice, including an end to criminal impunity.

Civil society has a clear and important role to play in the peace process. Its involvement will be crucial for the promotion of social and inter-communal reconciliation, in order to rid Darfurian society of the germs of chronic conflict that risk prolonging the crisis and affecting the entire subregion. Ending the crisis across Darfur requires addressing varied and complex issues: the pastoral and agrarian use and management of land; environmental degradation and the precarious livelihoods and living conditions of nomads; the new social and political realities of the camps of internally displaced people, et cetera. Civil society must be involved in the search for solutions in order for there to be widespread, sustainable peace.

The process of negotiations between the armed movements and the Government of National Unity has slowed since the signing of the 17 February 2009 Doha Goodwill Agreement. This is due to a crisis of confidence between the principal belligerents, as well as various differences that undermine the cohesion of the movements.

The Mediation has intensified its efforts with the Justice and Equality Movement of Khalil Ibrahim, as well as with the Sudan Liberation Movement of Abdul Wahid al-Nur. Our aim is for these two founding movements of Darfur's rebellion to unite their positions and those of all of the other movements of Darfur. I would like to praise the reunification efforts undertaken by the armed movements and supported by Libya and the United States.

To encourage them in this direction, the Government of National Unity should do its utmost to strengthen the credibility of the peace process. In

particular, it should reduce tensions in Darfur, improve security and advance socio-economic development.

I call upon all of the belligerent parties to agree a cessation of hostilities and to commit themselves to improve significantly the security situation in Darfur. There needs to be an end to hostage-takings, clashes between belligerents, the marauding of armed militias, the recruitment of fighters, the anarchic circulation of arms and above all, impunity.

During the course of the peace talks, the Mediation will encourage the parties to agree and establish a coordination body with the African Union-United Nations Hybrid Operation in Darfur (UNAMID) that will facilitate the free and safe passage of people and goods across Darfur.

It is also crucial that the Sudan improve its relations with Chad. That is a necessary, although not sufficient, condition for peace in Darfur. The re-establishment of confidence between the two will help to reduce tensions considerably. We should praise the recent initiative taken by Chad and the Sudan to improve their relations. I also ask the Council to continue to encourage the supportive diplomatic efforts of Libya, the Dakar Contact Group, Qatar and the wider international community.

The Darfur peace talks are taking place today in the uncertain and tense environment of the implementation of the Comprehensive Peace Agreement. The good conduct of the 2010 general elections across the whole of the Sudan, including Darfur, is a key factor for peace. The Mediation therefore strongly urges the parties to the Darfur crisis to reach the political understanding necessary to allow for the holding of elections — elections that will reinforce democracy, peace and stability in Darfur and the whole of the Sudan.

To that end, I would like to commend the excellent work done by the United Nations Department of Peacekeeping Operations, in coordination with the Department of Political Affairs and the African Union Commission, to develop an integrated overall approach to peace in the Sudan. It will help the Mediation to take into account the Comprehensive Peace Agreement calendar. It also supports the efforts of the Government of National Unity, the key actor in both the Comprehensive Peace Agreement and the Darfur processes, to promote peace across the country.

I would also like to highlight the analysis of the causes of conflict outlined in the report of the African Union High-Level Panel on Darfur. It explains how the conflicts in the East, South and West of the country are related to national political and economic power-sharing arrangements. That is why it is urgent that we come to a political arrangement in Darfur ahead of the electoral deadlines. Those elections should not threaten peace and stability in the Sudan. Rather, they should be an opportunity for the promotion of democracy, good governance and stability in the country.

Arriving at a political accord is essential to ensuring that the electoral process is neither boycotted nor taken hostage. To achieve that, I will invite the Government of National Unity of the Sudan, including the Sudan People's Liberation Movement, to work with the parties to the Darfur conflict during the peace talks in Doha. I hope that, together, they can agree the necessary political arrangements to allow the entire population of Darfur to take part in the elections. That will also offer them the opportunity to resolve, through dialogue, the questions of political representation and democratic good governance. Voting by the whole of Darfur's population in calm, free and fair elections constitutes the legitimate and acceptable means for the selection of its local and national political leaders.

The approach of the joint African Union-United Nations Mediation and of our partner, Minister Al-Mahmoud of Qatar, is adapted to the realities of African countries facing crises. It is also inspired by the values and traditional approach to conflict resolution in Africa, which are based upon the mutual confidence and respect of the parties. A participative and inclusive approach is the best way to establish lasting peace in Darfur. The Mediation is therefore involving representatives of all communities and women's groups, young people and internally displaced persons alongside the belligerents.

The first civil society forum, held in Doha, was an important success. I must thank the Government of National Unity of the Sudan, as well as local administrative authorities in Darfur, for their facilitation of the forum, in collaboration with UNAMID. The popular representatives of Darfur were able to assemble and freely discuss solutions to the crisis.

In the coming days, alongside negotiations between the belligerents, the Mediation will organize a

workshop with representatives of civil society and armed movements. The aim will be to reinforce the internal cohesion essential to the process. The exclusion or marginalization of one of the actors by the Mediation would otherwise certainly entail fratricidal clashes inside Darfur. Such fighting would increase insecurity and decrease stability across the whole subregion. The process of building peace must not exacerbate rivalries between the parties. Rather, it should unite them and help seal social reconciliation.

The Council's support for inclusive peace talks will play a decisive role in encouraging all the parties to join to process in Doha. The Sudanese State and its Administration are the lynchpin for the construction of peace. The international community should support them in the promotion of peace and democratic good governance, as well as socio-economic development in Darfur.

Among the challenges to the process are mistrust arising from the trauma of war and growing political rivalries, which are accentuated by the coming elections. Despites those challenges, however, we have hope that the principal actors in the crisis will come to the negotiation table to agree the modalities for ending the conflict. They need to agree the terms for peace, justice, national reconciliation, human security and economic and social progress in Darfur.

The refusal of some armed movements to take part in political dialogue and the persistent divisions between others should not be allowed to block the establishment of peace in Darfur. That is why the Mediation will, in the near future, submit to the belligerent parties for approval the solutions emerging through consensus from all of Darfur's communities. With the genuine popular support of the inhabitants of Darfur and the assistance of the international community, it will be possible to make significant progress towards durable social peace.

The Mediation recognizes the varying states of readiness of the parties and will not sacrifice the credibility or sustainability of the process. The Mediation will make progress with those who are ready, allowing time for those who are not. It will also simultaneously pursue three tracks: building consensus of opinion among civil society, organizing negotiations between the movements and the Government, and improving Chad-Sudan relations. It will advance as quickly as possible along each track, which will facilitate progress along the others.

I would like to finish by reiterating my commitment and my determination to fulfil, to the best of my ability, the mission that has been entrusted to me. I will continue to work, with integrity and impartiality, to improve the situation of the population of Darfur and the whole of Sudan. The Mediation will continue to advance, despite the complexity of the crisis and all of the various obstacles in our path.

To succeed in this mission to bring peace, we need now more than ever this Council's support to reinforce the authority and credibility of the Mediation. With the undivided backing of the Security Council and the international community at large, and with the engagement of the parties to the conflict, the population of Darfur will hopefully soon be able to find peace, reconciliation and socio-economic progress.

**The President**: I thank Mr. Bassolé for his briefing.

I now give the floor to the representative of the Sudan.

**Mr. Mohamad** (Sudan) (*spoke in Arabic*): At the outset, Sir, allow me once again to congratulate you, on this last day of your presidency of the Security Council for this month. It has been a very fruitful month in terms of the activities and varied initiatives undertaken. I would also like to thank Mr. Edmond Mulet, Assistant Secretary-General for Peacekeeping Operations, for his presentation at the beginning of this meeting of the Secretary-General's periodic report (S/2009/592) on the African Union-United Nations Hybrid Operation in Darfur (UNAMID). I would also like to thank Mr. Djibril Bassolé, Joint African Union-United Nations Chief Mediator for Darfur, for his briefing on the peace process.

In earlier statements, we have said that the peace process remains the only way of ensuring security, stability and lasting peace, particularly since we have now turned the page on military confrontation and there is no longer war in Darfur. Indeed, the desire for peace has won out as the unanimous choice of all of the citizens of Darfur. Only one link in the chain is still missing: the Security Council must breathe new life into the political process by undertaking immediate and decisive action to encourage those who are refusing or

hesitating to participate seriously in the negotiations that are planned.

The Government of Sudan firmly believes that it must focus its efforts on the political process as the top priority. But we are also not neglecting the need to meet the requirements of all the other tracks, particularly the maintenance of peace. Indeed, the report before the Council takes note of the cooperation of the Government of the Sudan, the initiatives it has undertaken and its close coordination with the African Union and the United Nations in the context of the Tripartite Mechanism, which was established to speed up deployment and to resolve all of the problems that still face us. The Tripartite Mechanism holds regular meetings, whose results confirm that the Government of the Sudan is cooperating fully and is positively addressing all the concerns expressed. The most recent such meeting, the seventh, was held in Khartoum on 16 November.

Moreover, three days ago the Peace and Security Council of the African Union organized an important visit to Darfur, during which its delegation affirmed that the situation in Darfur had clearly improved and that the Government of the Sudan was cooperating fully with UNAMID.

With regard to UNAMID contingents already deployed, the report confirms that the Mission is now fully operational and all that remain to be resolved are a few support issues. Deployed military contingents now number 14,638 personnel, the police component 4,449 personnel, and the civilian component 3,921. The report states clearly in paragraph 43 that — while the mission is now fully operational and has been for over a year — it still lacks military support, for example helicopters and transport units. This does not fall within the purview of either the Sudan or the Tripartite Mechanism.

Meanwhile, registration for the upcoming elections in April is proceeding smoothly in all provinces of the Sudan, including in Darfur, and abroad.

Sudan has also undertaken an initiative with regard to the brotherly country of Chad through the important visit by presidential adviser Ghazi Salaheddine to N'Djamena with a view to normalizing relations between our two countries and brotherly peoples.

All of the personnel on the ground in Darfur have been deployed thanks to the unstinting cooperation of the Government of the Sudan, the host country of the Mission. So we were justifiably surprised that the report, in some of its paragraphs, overlooks this reality and gives the impression that there are still certain obstacles facing UNAMID. Reference was made to a few isolated incidents, which are the sort of thing that could happen anywhere in the world, not to mention in an area such as Darfur, where there has been an armed rebellion. For example, if a UNAMID patrol was somewhat delayed, the report indicates, in paragraph 66 for example, that Government officials — in the plural — prevented access to UNAMID patrols.

What is more, a number of paragraphs in the report describing the security situation do not faithfully reflect what is actually happening. There has been an end to fighting and an improvement in the security situation in Darfur, and yet the report highlights a number of isolated incidents, which the Government of the Sudan has already strongly condemned. The Government is seeking to prevent any recurrence of incidents such as the kidnapping of two UNAMID staff members or the killing of an individual by unknown attackers.

The report makes reference to serious developments in the security sphere. This is rather startling to us. We do not want any guest of ours, or any member of the Mission to be harmed, let alone kidnapped or killed, and we condemn such acts. These isolated incidents must not be exaggerated. We must put them into their proper context as the exception, not the rule. We note that the security situation in Darfur is somewhat stable and continues to improve.

During your presidency of the Council, Sir, you have undertaken a number of initiatives, for example on the protection of civilians. But what is missing is that we and the United Nations must be protected against such non-factual reports, drafted by international officials not in the interest of peace in Darfur but to serve particular interests. The reports of the United Nations should be objective and positive, and they should serve the cause of peace, not run counter it.

**The President**: There are no further speakers on my list. In accordance with the understanding reached in the Council's prior consultations, I now invite Council members to informal consultations to continue our discussion of the subject.

*The meeting rose at 11.15 a.m.*

United Nations S/PV.6228

# Security Council

Sixty-fourth year

*Provisional*

## 6228th meeting

Thursday, 3 December 2009, 10 a.m.
New York

| | | |
|---|---|---|
| *President*: | Mr. Kafando | (Burkina Faso) |
| *Members*: | Austria | Mr. Mayr-Harting |
| | China | Mr. Liu Zhenmin |
| | Costa Rica | Mr. Urbina |
| | Croatia | Mr. Vilović |
| | France | Mr. Araud |
| | Japan | Mr. Okuda |
| | Libyan Arab Jamahiriya | Mr. Dabbashi |
| | Mexico | Mr. Heller |
| | Russian Federation | Mr. Churkin |
| | Turkey | Mr. Apakan |
| | Uganda | Mr. Rugunda |
| | United Kingdom of Great Britain and Northern Ireland | Mr. Parham |
| | United States of America | Ms. DiCarlo |
| | Viet Nam | Mr. Le Luong Minh |

## Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

Letter dated 12 November 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2009/587)

Letter dated 12 November 2009 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 addressed to the President of the Security Council (S/2009/589)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-506.

09-63003 (E)

Please recycle

*The meeting was called to order at 10.15 a.m.*

**Expression of thanks to the retiring President**

**The President** (*spoke in French*): As this is the first meeting of the Council in the month of December, I should like to take this opportunity to pay tribute, on behalf of the Council, to His Excellency Mr. Thomas Mayr-Harting, Permanent Representative of Austria, for his service as President of the Security Council for the month of November 2009. I am sure I speak for all members of the Council in expressing deep appreciation to Ambassador Mayr-Harting for the great diplomatic skill with which he conducted the Council's business last month.

**Adoption of the agenda**

*The agenda was adopted.*

**International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991**

**International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994**

**Letter dated 12 November 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2009/587)**

**Letter dated 12 November 2009 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 addressed to the President of the Security Council (S/2009/589)**

**The President** (*spoke in French*): I should like to inform the Council that I have received letters from the representatives of Bosnia and Herzegovina, Kenya, Rwanda, Serbia and Sweden, in which they request to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the consideration of the item without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

*At the invitation of the President, the representatives of the aforementioned countries took the seats reserved for them at the side of the Council Chamber.*

**The President** (*spoke in French*): In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Judge Patrick Robinson, President of the International Tribunal for the Former Yugoslavia; Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda; Mr. Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia; and Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda.

It is so decided.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

I wish to draw the attention of Council members to the following documents: S/2009/589, which contains the text of a letter dated 12 November 2009 from the President of the International Criminal Tribunal for the Former Yugoslavia addressed to the President of the Security Council; S/2009/587, which contains the text of a letter dated 12 November 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council; S/2009/394, which contains a note by the Secretary-General dated 31 July 2009, transmitting the sixteenth annual report of the International Tribunal for the Former Yugoslavia; and S/2009/396, which contains a note by the Secretary-General dated 31 July 2009, transmitting the fourteenth annual report of the International Criminal Tribunal for Rwanda.

At this meeting, the Security Council will hear briefings by the President of the International Tribunal

for the Former Yugoslavia, the President of the International Criminal Tribunal for Rwanda and the Prosecutors of those two Tribunals.

I now give the floor to Judge Patrick Robinson, President of the International Criminal Tribunal for the Former Yugoslavia.

**Judge Robinson**: It is an honour for me to appear before the Council in my capacity as President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and to do so under the presidency of Burkina Faso. I congratulate Burkina Faso on its assumption of the presidency of the Security Council and thank the President for the attention he has given to matters pertaining to the Tribunal.

My remarks today will be brief, as the details of the measures the Tribunal has undertaken to complete its mandate are set out in my written biannual report (S/2009/589), which has been duly submitted to the Council.

Since my most recent presentation, the Tribunal has continued to focus its energies on completing its work as expeditiously as possible. Of the 161 accused indicted by the Tribunal, only a single accused remains in the pre-trial stage awaiting the commencement his trial, and that trial will start on 17 December. A total of 24 accused are presently on trial in nine cases, and another 13 have appeals pending. Five trials are expected to be completed during the course of 2010 and three in the first half of 2011, while the remaining case — that of Radovan Karadžić — is currently estimated to be completed in August or September 2012.

With the redeployment of resources to the Appeals Chamber, we anticipate that all appeals will be completed in 2013, except for the Karadžić appeal, which is estimated at this time to be finished in February 2014. This revised estimate for the Karadžić appeal results from the decision of the Trial Chamber to assign counsel following the refusal of the self-represented accused to attend the trial. The Trial Chamber has given the assigned counsel five months to prepare, and the trial will resume in March 2010.

The redeployment of resources from trials to appeals is part of the Tribunal's overall downsizing strategy, which has already commenced. While these are our currently anticipated dates for completion, all possible measures will be taken to speed up our proceedings and shorten these anticipated times. To ensure that all possible measures are being taken to expedite our proceedings, I have reconvened the Working Group on Speeding up Trials. The recommendations of that Group will be presented in my next completion strategy report.

At my last briefing, I reported that contempt proceedings were sapping the strength of the Tribunal and diverting us from our main objective — the fair and expeditious completion of our trials and appeals for persons charged with serious violations of international humanitarian law. I am happy to inform the Council that we have made progress on this front, rendering two contempt trial judgments and two contempt appeal judgments. We have also amended the rules of procedure and evidence to expedite contempt proceedings.

As can be seen, our efforts to implement the completion strategy are coning to fruition and the end of all trials is in sight. But one serious hurdle remains. I refer to the continued flight from justice of Ratko Mladić and Goran Hadžić. The failure to bring these two men to justice will tarnish the Security Council's historic contribution to peacebuilding in the former Yugoslavia. I also wish to stress, as I have done before, that their immediate arrest would obviate the need for a residual trial function. It is not too late to arrest and try these fugitives, and I hope that the Security Council and Member States will act decisively to achieve that goal.

The other major issue on which I request the Council's assistance today is staff retention. It is a matter that requires immediate attention. We are currently losing, on average, about one staff member per working day to more secure employment, often to other judicial institutions in The Hague, such as the International Criminal Court and the Special Tribunal for Lebanon. In a recent survey of 451 staff members, 57 per cent stated that they were actively seeking employment elsewhere. If we consider the results from one specific group of critical staff members — the legal support staff of the Office of the Prosecutor and the Chambers — 70 per cent were actively seeking employment elsewhere, 24 per cent stated that they felt exhausted by their current work load, and close to 50 per cent stated that they felt they have to work too fast. The reality of the situation is that there is a very real threat to the Tribunal's ability to conduct its work

as expeditiously and fairly as possible during the remaining years of its mandate.

I acknowledge the efforts made by the General Assembly to assist the Tribunal through resolution 63/256 of 24 December 2008, which authorizes the Tribunal to offer critical staff longer contracts, thereby alleviating some of their job insecurity. But more needs to be done, and there are two areas in which we could really use the help of the Security Council.

First, the International Civil Service Commission has recommended an end of service grant applicable to those staff separating from the organization upon completion of their contracts, provided they have served continuously for 10 years. Many of our staff have served over 10 years, and the end of service grant would provide them with a concrete incentive to remain until the completion of the Tribunal's work. Secondly, of great benefit to our staff would be their inclusion in the regime of continuing contracts. Continuing appointments will offer some of the stability that we sorely need, and I urge the Council to ensure that this new regime, if adopted, is made applicable to Tribunal staff.

However, the consultations I have had about these matters have left me somewhat uneasy. But it would be wrong — completely wrong — for a body like the United Nations to abandon the staff members of an institution that it had set up in a time of crisis to assist in the restoration of justice, peace and democracy in a troubled region, and which has, by any reasonable assessment, rendered invaluable and trailblazing service not only to that region, but to the international community as a whole. And it would be especially wrong for the United Nations to distance itself from the needs of the staff of such an institution, when it is in the final stages of its work, on formalistic grounds based on the so-called separateness and temporary character of that institution. That approach would result in the kind of injustice and discrimination that is antithetical not only to the lofty and noble purposes of the United Nations itself, but also to the inspiring objectives of that very institution. The staff of the Tribunal should not be treated as though they were staff of other nations. They are in fact staff of the United Nations and should not be separated from the benefits of United Nations staff by artificial administrative barriers. And so I appeal to the international community to exercise foresight by assisting the tribunal with measures to retain its staff and reduce the burden on the institution imposed by constant staff recruitment.

As the Council is no doubt aware, during my recent address to the General Assembly (A/64/PV.16), I proposed the establishment of a claims commission to compensate the victims of crimes committed during the wars in the former Yugoslavia. Since I became President of the Tribunal, I have had occasion to meet a multitude of victims' groups, and they have expressed anguish at the failure of the international community to provide any kind of compensation for their suffering. Indeed, they feel that they have been forgotten. Currently, there is no effective mechanism by which those victims can seek compensation for their injuries, despite the fact that their right to such compensation is firmly rooted in international law. And I refer to instruments such as the General Assembly's 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Justice is not only about punishing perpetrators, it is also about restoring dignity to victims by ensuring that they have the concrete means to rebuild their lives. Clause 13 of the General Assembly's Declaration itself identifies sources of compensation, including the offender or national funds. However, in circumstances where the State is unable to compensate the victim, the Declaration proposes that other funds be established for this purpose. This was a matter that former Tribunal President Jorda brought to the attention of the Security Council in November 2000, recommending to the Council and to the Secretary-General that methods of compensating victims of crimes in the former Yugoslavia, notably a claims commission, be considered by the appropriate organs of the United Nations. I therefore implore the Council to take official steps to support the establishment of such a claims commission as a means of complementing the Tribunal's work.

I now wish to turn to another matter — that of the work being done by the Tribunal in preparation for the establishment of a residual mechanism. On 21 May 2009, the Secretary-General published his report on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the

International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals (S/2009/258). On 8 October 2009, the Secretary-General advised the Tribunal of the Security Council's endorsement of those recommendations and requested that the Tribunal comply with recommendation (m) in paragraph 259 and report in detail on the Tribunal's implementation of the tasks identified therein.

In my written report, I have addressed each of these tasks separately. But there is one task that I wanted to bring to the Council's attention here today. We have been asked to declassify, to the greatest extent possible, all the records of the Tribunal. This is a mammoth undertaking, which we have begun to tackle in the comprehensive and organized declassification project. This project will require significant resources to be properly implemented. To give the Council an idea of the work involved, the first case being examined is that of *Tadić*. All of the material has to be examined to identify the confidential hearings, witnesses, filings and exhibits. There are 1,304 pretrial transcript pages, 9,300 trial pages, 682 appeal pages, 65 confidential filings and 126 protected witnesses. All of those witnesses will need to be contacted to determine whether they oppose the lifting of confidential protection orders. Moreover, hundreds of exhibits will need to be examined for confidential information. While this is an onerous undertaking, when it is considered that the Tribunal has completed proceedings against 121 accused in 87 cases and still has 10 cases to complete against 25 accused, it will be appreciated that this task will greatly ease the judicial workload of the residual mechanism. The more material that is made public, the less need there will be for national jurisdictions to petition the residual mechanism for access to confidential material and for judges to issue decisions on those requests.

While primarily focusing on its core business, the Tribunal has also been diligently working towards the strengthening of competent national judicial systems in the former Yugoslavia in accordance with Security Council resolutions 1503 (2003) and 1534 (2004). I am proud to report that the Tribunal recently published a comprehensive report entitled "Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer" evaluating the needs of the domestic judiciaries in the region. This report was prepared jointly with the Organization for Security and Cooperation in Europe and the United Nations Interregional Crime and Justice Research Institute and has been very well received in important quarters as groundbreaking.

Together with those institutions, we are now preparing an ambitious project to guarantee that the national justice systems in the region have the capacity to deal with their growing war crimes caseload as the Tribunal heads towards its final days. Generous funding from the European Commission is expected for this timely undertaking. I also urge the Security Council to support the national jurisdictions in the region as their capacity to continue our work is a key aspect of the Tribunal's legacy in the former Yugoslavia.

Inspired by broader United Nations efforts to coordinate rule of law activities, the Tribunal will convene a two-day conference at The Hague on 23 and 24 February 2010. The goals of the conference are to consult with stakeholders and generate interest and support for the Tribunal's legacy strategy in the former Yugoslavia, to foster contacts and partnerships between the Tribunal and different players, to share and gather information on what is being done by different actors in relation to capacity-building in the region, and to promote the coordination and consolidation of all of those efforts.

The conference will also provide an opportunity for countries of the former Yugoslavia and the broader international community to communicate to the Tribunal their ideas and expectations of its legacy. That dialogue will contribute to the work of the Tribunal in developing its comprehensive legacy strategy. It is anticipated that more than 200 persons will participate in the conference, with representatives from the Tribunal, the Security Council Working Group on the ad hoc Tribunals, the Rule of Law Unit, national jurisdictions in the former Yugoslavia, victims' groups, organs of the European Union and many others. The conference is being funded by voluntary pledges, and invitations have been issued to all members of the Security Council.

In closing, I would like to reiterate that we at the Tribunal remain dedicated to completing the work entrusted to us so that peace, justice and reconciliation may prevail in the region of the former Yugoslavia. I do emphasize, however, that a major obstacle to completing that task is the continuing flight from justice of Ratko Mladić and Goran Hadžić, and I urge

the Council to seek ways to facilitate their immediate arrest.

The staff retention issue also remains critical to the Tribunal's capacity to expedite its operations. Again, we urge the Council to actively work with other relevant organs of the United Nations for meaningful retention measures as a matter of urgency and in the two specific ways I have mentioned today.

**The President** (*spoke in French*): I thank Judge Patrick Robinson for his briefing.

I now give the floor to Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda.

**Judge Byron**: I would like to join Judge Patrick Robinson in expressing congratulations to you, Sir, on your assumption of the presidency of the Security Council for December, the last month of your country's membership in the Council. I wish you all the best for a successful tour of duty.

On 8 November 1994, the Security Council adopted resolution 955 (1994) and created an international tribunal to bring justice to the hundreds of thousands of Rwandan victims of genocide, war crimes and crimes against humanity. Today, 15 years later, I am pleased to inform the Council of the remarkable progress in the conduct of trials and judgement deliveries. But yet, significant work remains ahead before we can safely say that we have achieved our mandate and tried the principal perpetrators of the horrendous atrocities committed in Rwanda in 1994.

Since my last briefing in June, our Tribunal has rendered five first-instance judgements in single-accused cases, including a sentencing judgement following a guilty plea, and one appeals judgement. We have mastered the difficult task of commencing 10 new trials in the course of this year. In two of the cases, judgements have already been delivered; in three other cases, including a retrial, the entire evidence has been heard. In the remaining five cases, the defence phase will be completed before the end of this year or in the first half of 2010. The spillovers are mainly linked to fair trial concerns; defence counsel have needed more time to prepare their cases initially or more time to respond to the prosecution case.

The four ongoing multi-accused cases continue to pose the greatest challenge to the Tribunal, even where the evidence phase has been completed, as is the case in three of the trials involving 17 accused. The judgement drafting in those cases is expected to be completed in the course of next year, but progress is continuously challenged by parallel assignments of the judges and their legal staff to support other cases. While the judges sit full days over months in the courtroom to hear sometimes several additional trials, the scheduling of complex deliberations in the multi-accused cases is difficult and risks delays.

The fourth trial, *Karemera et al.*, continues to be delayed largely due to the illness of one of the defendants, requiring the Chamber to sit in half-day sessions only and to allow additional breaks in the trial schedule to accommodate medical needs. Despite those unavoidable impediments, we aim to complete the evidence phase in this case by the end of 2010.

The *Karemera* trial will be one of three ongoing cases in which judgement drafting will continue in the first half of 2011. The other two, *Ngirabatware* and *Nzabonimana*, are likely to spill into 2011 because the presiding judges are also members of the bench in the largest multi-accused case, the "*Butare*" trial. Priority must be given to judgement delivery in that case, which is expected for autumn 2010, even though this may delay the delivery of judgements in the other cases by some months.

In September, the plenary of judges adopted an amendment of the rules of procedure and evidence, allowing for the hearing of special depositions for the preservation of evidence against the remaining fugitives. That amendment aims at preventing the loss of evidence 15 years after the crimes were committed. The hearings, which are planned for the last quarter of next year, will focus on those of the three currently top-ranked accused who still remain at large.

As Council members can see, we have another busy year ahead, in which we need to provide increased output with declining resources. During the first half of 2010, we will focus on the completion of the evidence phase in all ongoing trials, with the exception of *Karemera*. In addition, we expect judgement delivery in four single-accused cases. During the second half of 2010, additional judgements in six cases involving 17 accused are to be rendered. In short, and provided we manage to retain the current level of legal support staff, we expect judgement delivery in trials against 21 accused in 2010. Furthermore, two new trials will commence, and we

aim, to the extent possible, for completion of their evidence phases during the coming year.

As I mentioned before, most of the 7 permanent and 11 ad litem judges currently serving at the Tribunal are involved in several cases in parallel. That situation will continue for the majority of next year. Judges are also needed to handle the cases of the two newly arrested accused, for possible requests for referral of cases to national jurisdictions under rule 11 bis, and for the special deposition hearings. I therefore ask the Council to extend the exception granted in resolution 1855 (2008), allowing for a maximum number of 12 ad litem judges to serve at the Tribunal at any one time, until the end of 2010.

I explained in June our concerns about the inequality in the terms and conditions of service between permanent and ad litem judges, concerning in particular the entitlement to pensions. Resolution 1878 (2009) took note of those concerns. I have had bilateral discussions with representatives of numerous Member States and the Secretariat on the matter, and they have expressed their sympathy for our endeavour to achieve a review of the terms and conditions of service in the interest of equity and the completion strategy. I am confident that the matter can be addressed by the General Assembly in early 2010.

Let me now turn to another fundamentally important issue, namely, State cooperation. The arrests in August and October of two of the fugitives, Grégoire Ndahimana and Idelphonse Nizeyimana, are very positive developments, and I would like to thank the respective national authorities in the Democratic Republic of Congo and Uganda for their important contribution to the fight against impunity. The transfer of Idelphonse Nizeyimana to Arusha only one day after his arrest in Uganda should serve as an example of efficient and swift cooperation between the Tribunal and Member States.

I am sure that Council members agree with me that 11 fugitives remaining at large today, more than 15 years after the genocide, are 11 too many. The list includes three top suspects, Félicien Kabuga, Protais Mpiranya and Augustin Bizimana. The time for their arrest is long overdue. They have benefited from impunity for far too long.

I would like to recall once again that it was the Council that determined, when setting up the Tribunal in 1994, that genocide, war crimes and crimes against humanity constitute a threat to international peace and security. That proposition was as true then as it is today. It is in the interest of the entire international community that the remaining fugitives be arrested and tried fairly. This Tribunal has not accomplished its mandate, if top-level fugitives continue to benefit from impunity, while victims wait for justice. I strongly call upon all Member States, and in particular those where there is significant evidence that fugitives are hiding in their territory, such as Kenya, to fully cooperate with the Tribunal.

The fugitives need to be arrested and transferred to Arusha now, before the Tribunal closes down. The trial functions of a residual mechanism are indispensable as long as fugitives remain at large. But we should all aim at leaving behind a heritage of trials that is as limited as possible, so that the mechanism can focus on truly residual work, such as the management of the Tribunal's archives, continuous witness protection and the supervision of sentences.

Recent developments at the Tribunal highlight the essential need for cooperation by Member States in another area. During the last weeks, two accused were acquitted, Hormisdas Nsengimana at the trial level and Protais Zigiranyirazo by the Appeals Chamber. For them and two others who were previously acquitted and who all live currently in safe houses in Arusha, the Registrar of the Tribunal is seeking countries for relocation. It is of fundamental importance and in the interests of fair justice that Member States be ready and prepared to accept the relocation of acquitted persons to their territory.

The third essential area of cooperation by Member States and a cornerstone of the completion strategy is the referral of cases to national jurisdictions under rule 11 bis. The Prosecutor, assisted by the Registrar, continues his efforts to ensure that more than the two cases that were transferred to France in 2007 can be handled by national courts now or in the near future. The focus of the efforts continues to be technical support for Rwanda in order to ensure that the State in which the crimes were committed can take over cases. But other Member States with jurisdiction are also urged to consider accepting some of the remaining cases of fugitives from the Tribunal for trial on the national level. In this regard, we are pleased to note legislative changes that have been introduced or are under way in several countries, providing jurisdiction over genocide, crimes against humanity

and war crimes committed, for instance, in Rwanda in 1994. Such laudable legislative changes not only support the Tribunal in its efforts to transfer cases to national jurisdictions, but underscore the willingness of those countries to effectively fight impunity for the most serious international crimes, irrespective of where or by whom or against whom they were committed.

Our efforts are channelled towards the completion of our remaining trial and appeals work. At the same time, we have been following up on the recommendations for the transitional period, contained in the report of the Secretary-General on the residual mechanism (S/2009/258). An overview of the measures taken so far is contained in our completion strategy report (see S/2009/587), and we will continue, to the best of our abilities, to provide the Council with comprehensive information to support its decision-making process.

The discussions in the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee on the Tribunal's budget submission for the 2010-2011 biennium are ongoing. Since our submission, many developments have occurred, for example the two new arrests, which will lead to certain adaptations in the initial request. Any change in the judicial calendar at this stage, when contract extensions are tightly linked to trial schedules, affects all who are involved in the trial work, from legal officers and trial attorneys to court reporters and interpreters. I ask for the understanding of all Member States for that increased need for flexibility.

Over the past six months, the Governments of the members of the Security Council have continued to provide support for our work through the adoption of resolution 1878 (2009) in July, the arrest of fugitives, voluntary contributions to the Trust Fund, and intense preparatory work for the residual mechanism. I would like to assure the Council that all of us at the Tribunal in Arusha greatly appreciate that support. The Secretariat, in particular the Office of Legal Affairs, has facilitated our cooperation with the Council and with the Governments of its members and has assisted in communicating our mutual needs and concerns. We extend our appreciation and thanks to all their staff.

It remains a fact that the ad hoc Tribunals have laid the ground for the rapid and astonishing development of international criminal justice during the past decade and a half. Without them, there would be no International Criminal Court. Without their jurisprudence, support and policy-setting examples, convictions of Rwandan génocidaires in Canada, the Netherlands and Belgium and the ongoing investigations against alleged perpetrators of genocide, war crimes and crimes against humanity worldwide would have been less likely, to say the least.

We all know that the days of our Tribunal are numbered. It is essential that we reflect on the lessons we can learn from the past 15 years and on how best to address the fight against impunity for international crimes in the future. If we succeed together in establishing a more effective rule of international law, the suffering of countless victims will not have been completely in vain.

At the same time, we know that the last part of the Tribunal's lifespan is not an easy one. We must remain committed and strive to improve our work, while our experienced and hard-working staff faces the imminent end of their contracts and the need to secure their professional careers.

The future of the international fight against impunity will rest mainly on the shoulders of national jurisdictions and the International Criminal Court. However, today, I ask for the Council's continuous support so that our Tribunal, which was at the starting point of that amazing development of international criminal justice, can complete its mandate expeditiously and with all due respect for the highest standards of fair trials.

**The President** (*spoke in French*): I thank Judge Byron for his briefing.

I now give the floor to Mr. Serge Brammertz, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia.

**Mr. Brammertz**: This morning, I will address the Council on the key elements related to the completion of our mandate, which has moved into a significant new phase. More specifically, I will speak briefly on the status of our trials and appeals; the cooperation between the Office of the Prosecutor and States; our capacity-building efforts throughout the region; and, lastly, our plans to downsize my Office in the coming years.

At present, the Office of the Prosecutor is working on eight trials involving 17 accused. The last trial to start at the International Tribunal for the Former

Yugoslavia, except the trials of the fugitives, is scheduled to commence on 17 December this year.

On 27 October 2009, the trial in the case against Radovan Karadžić started, with the prosecution presenting its opening statement. The prosecution is prepared and remains ready to proceed with its first witness. As with other cases, my Office has balanced various competing requirements associated with such large cases. It will present a case that is representative of the crimes committed, yet streamlined and manageable.

The Karadžić indictment charges crimes arising from the ethnic cleansing of Bosnia and Herzegovina, the shelling of Sarajevo, the hostage-taking of United Nations peacekeepers and the attack on the United Nations safe area of Srebrenica. Because of Karadžić's senior position and the magnitude and gravity of the crimes charged, his trial is important not only to the victims of the crimes, but also to the international community as a whole.

At the start of the trial against Karadžić, I met with representatives of victims associations. I was encouraged to hear that they continue to support the efforts of the Office of the Prosecutor. For the victims, the crimes remain in the present and are not historical events of the past. As we proceed with the evidence of what happened, we are reminded of the fact that Mladić is still to be arrested. As an indicted accused, Mladić's place is before the Trial Chamber, with Karadžić.

The arrests of Ratko Mladić and the other remaining fugitive, Goran Hadžić, remain one of my Office's foremost priorities. Prosecution lawyers are currently reviewing the Mladić indictment and I expect to file a proposed amended indictment shortly.

There are currently five cases on appeal. During the next biennium, appeals cases are expected to double. Plans have been implemented to transfer posts and necessary resources to the Appeals Section of my Office in order to address that increased workload. As a result, my Office is fully prepared to meet the work as appeals hearings increase in number and continue into 2013.

The cooperation of States remains a key condition to the successful accomplishment of our mandate and to meeting the completion strategy goals. In recent weeks, I met with the authorities of Bosnia and Herzegovina, Croatia and Serbia at the political, judicial and operational levels to assess their level of cooperation with my Office. The purpose of the missions was also to further our relations with national prosecution services.

Since the last briefing to the Council, Serbia's cooperation with my Office has continued to progress. Prosecution requests to access documents and archives are being dealt with more expeditiously and effectively. It is important that the authorities continue to provide that level of assistance, which will remain crucial during current and future trial and appeals work.

The most critical aspect of Serbia's cooperation is the need to apprehend the fugitives. My Office recognizes the professionalism and commitment of operational services tasked with the tracking of fugitives. I am in regular and direct contact with officials in charge of these operations. These services are now working more efficiently and in a coordinated manner. Moreover, a variety of operational activities, including search operations, are currently being conducted. Serbia must maintain these efforts with the clear objective of apprehending the fugitives.

With regard to Croatia, we continue to work on a regular basis with the Ministry of Justice and the Office of the State Prosecutor, which are assisting in responding to the prosecution's requests. The central issue of concern remains the still unresolved request to locate and obtain key military documents related to Operation Storm of 1995. I welcome, however, the personal initiative of the Prime Minister of Croatia to establish in October an inter-agency task force aimed at locating these documents, particularly as there had been virtually no activity in the administrative investigation since my last briefing to the Security Council in June (see S/PV.6134). A report of the task force received this week is helpful in revealing gaps in the administrative investigation and in identifying further investigative steps to be taken. These and all other available investigative steps must be urgently undertaken in order to complete a comprehensive and credible investigation into locating the missing documents.

Bosnia and Herzegovina continues to respond to all prosecution requests. My Office interacts on a regular basis with the Special Department for War Crimes of the State Court. I am, however, concerned about the possible departure of international personnel

and support staff from the Special Department for War Crimes. Despite repeated requests from judicial institutions in Bosnia and Herzegovina, the mandates of international staff ending in December have not been renewed due to the lack of political will. If this matter is not urgently addressed, ongoing trial proceedings and war crimes investigations could be jeopardized. There will also be serious repercussions for the Tribunal's work, since they also act on investigative material transferred by my Office. Immediate action is needed.

My Office will soon complete the hand-over of investigative files to prosecutors in Bosnia and Herzegovina, Croatia and Serbia. In addition to the rule 11 bis cases transferred on the basis of judicial decisions, in total my Office has handed over 17 investigative files involving 43 suspects to authorities throughout the former Yugoslavia.

A fundamental aspect of the Tribunal's completion strategy is the strengthening of the judicial systems in the States of the former Yugoslavia. As a concrete example, I would like to mention the successful project for national prosecutors and young professionals from the former Yugoslavia. This project was set up jointly by my Office and the European Commission. In June, three prosecutors from the region — one from Bosnia and Herzegovina, one from Croatia and one from Serbia — began working as liaison prosecutors within my Office.

Domestic prosecutors have to continue the work that my Office had originally undertaken, for instance, by working on cases and material that have been transferred to the region. As I have indicated in the past, national prosecution services and judiciaries continue to face significant legal obstacles and challenges with regard to the prosecution of war crimes. The prohibition on extraditing nationals to other States threatens successful investigations and prosecutions, as do legal barriers to the transfer of war crimes cases between States. State prosecutors are encouraged to maintain an open dialogue and to find ways to cooperate in the most efficient and professional manner possible.

Downsizing mechanisms have been agreed and communicated to staff and will be implemented starting 1 January 2010. Initial staff reductions in the Office of the Prosecutor will start immediately in the new year and will increase throughout the year, reflecting the completion of trials. My Office's budget proposal for 2010-2011, which was discussed with the Advisory Committee on Administrative and Budgetary Questions, proposed a series of cuts in staff numbers as trials are completed. Specifically, we have called for a nearly 40 per cent reduction in the Office of the Prosecutor as trials end over the course of the next year, including abolishing one of the two director posts within my Office. Over the next two years, there will be a reduction of 60 per cent of staff positions within the Office of the Prosecutor. In the meantime, prosecution trial and appeals teams will continue to work at maximum capacity to ensure that trials proceed expeditiously and in accordance with the completion strategy.

I thank members for their attention. On behalf of everyone in our Office, I would like to express my appreciation for the Council's ongoing support of our work.

**The President** (*spoke in French*): I thank Mr. Brammertz for his briefing.

I now give the floor to Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda.

**Mr. Jallow**: The past six months have been a period of sustained and intense work at the International Criminal Tribunal for Rwanda (ICTR) in furtherance of the completion of trial and other activities. During this period, the Office of the Prosecutor has been able to prepare and present the trials of six new cases and to complete the prosecution phase of the trials in all but one of these cases. A guilty plea was also successfully concluded in the Michel Bagaragaza case and received the endorsement of the Trial Chamber.

Over the same period, the Office of the Prosecutor has had to prepare and file two final appeals and three interlocutory appeals. It has also had to respond to four final appeals and eight interlocutory appeals filed by the defence. This is in addition to the preparation of two motions for additional evidence and responses to nine such motions in the Appeals Chamber. Three final appeals were also argued, with judgement delivered in one of them and pending in the other two.

As the President has indicated, two new arrests of indictees were made. Grégoire Ndahimana was arrested

in the Democratic Republic of the Congo in a joint operation of the ICTR, the Democratic Republic of the Congo and the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) in August. Idelphonse Nizeyimana, a leading fugitive earmarked for trial at the ICTR, was arrested in Uganda in October 2009. I would like to record our appreciation to the Governments of the Democratic Republic of the Congo and Uganda, as well as to MONUC, for their cooperation, which made these arrests possible.

With such continued tripartite cooperation among MONUC, the Democratic Republic of the Congo and the ICTR, we are optimistic that several fugitives still sheltering in the Democratic Republic of the Congo can be apprehended and brought to justice and that their arrests will contribute significantly to the restoration of peace and stability in the Great Lakes region.

However, I regret to report that there has been no progress in the matter of cooperation by Kenya in relation to the case of Félicien Kabuga. Repeated requests to the Government of Kenya for details of Kabuga's reported departure from that country have gone unanswered for the past 12 months. This situation should not be allowed to continue. This Council has, by its resolution 1503 (2003), called on Kenya to cooperate with the ICTR to ensure the arrest and transfer of Kabuga to the Tribunal for trial. Kenya should be required to comply with its legal obligations under the United Nations Charter, and international law generally, to give full cooperation to the ICTR and to comply with these requests. In the event that this situation continues in the weeks ahead, my Office will seriously consider the option of initiating the process for the formal referral of Kenya to the Security Council under article 28 of the statute of the Tribunal for non-cooperation with the ICTR.

The fifth Colloquium of Prosecutors of International Criminal Tribunals, which I referred to in my last briefing to the Council (see S/PV.6134), was successfully hosted by the Office of the Prosecutor of the Tribunal in November in Kigali, Rwanda. It gave the prosecutors of all the international tribunals who participated in it an opportunity to share experiences as well as lessons learned and to consult further on ways in which the process of fighting impunity through the enforcement of international criminal law can be further enhanced. The Colloquium adopted the Kigali Declaration on international criminal justice, which will be circulated to all Member States. In the declaration, inter alia, the Prosecutors called upon all States to take the necessary measures to vest their national and regional judicial systems with the capacity and jurisdiction to prosecute or extradite those suspected of international crimes and to provide full cooperation to all international criminal tribunals, in particular with regard to the enforcement of orders and requests for assistance.

In the months that lie ahead, my Office will focus its efforts on several fronts. Trial readiness preparations are already in progress in respect of the two recent arrestees, namely, Grégoire Ndahimana and Idelphonse Nizeyimana, whose cases are set for trial in 2010. My Office will also be attending to the conclusion of eight partly heard cases, some of which commenced in the past six months. We anticipate that, by the end of 2010, the trials of all current detainees, save the two new arrestees, will have been concluded.

We are also optimistic that the intensification of tracking efforts and greater State cooperation may yield positive results with regard to the apprehension and transfer to the ICTR of the remaining 11 fugitives. Three of those fugitives have been earmarked for trial at the ICTR or by the residual mechanism, and the remaining eight for referral to national jurisdictions. The prospects for referral to a national jurisdiction following any further arrests will largely determine the conclusion of the Tribunal's trial phase under the completion strategy. At this stage, it would be helpful, and indeed necessary, for the Security Council to continue to remind Member States of their legal obligations of cooperation in respect of fugitives.

In the absence of other States willing to accept cases from the ICTR for trial, our efforts with regard to the referral of cases to national jurisdictions continue to focus on Rwanda. As I reported the last time we met with the Security Council, Rwanda has undertaken considerable law reform in the justice sector that, if combined with appropriate capacity building measures, should be sufficient to enable my Office to renew its requests for referral of cases to that country.

Since our last report to the Council, the Tribunal has provided training to the staff of the new Rwanda witness protection service. Some donors have agreed to provide the necessary resources to make the service and the video link system operational before the end of

2009. Those measures should take care of the concerns related to witness protection and provide an alternative for the taking of evidence from those witnesses who are reluctant to travel to Rwanda to testify. Once those capacity-building measures are implemented, I propose to file new applications, early in 2010, for the referral of the cases of eight of the 11 fugitives to Rwanda for trial.

Cooperation between the ICTR and national prosecuting and national judicial authorities has intensified significantly since the holding of a joint forum with such authorities in November 2008 at the ICTR. The authorities of several such States are now actively engaged in the investigation and prosecution of international crimes, in particular those connected with the Rwandan genocide of 1994. Those authorities require, and have benefited from, significant assistance, in particular evidence from the ICTR, in that process. In the past 12 months, my Office has received requests for assistance from 13 countries with regard to 44 targets under investigation by national authorities. We have serviced those requests by, among other things, providing information from, and access to, our evidentiary database and the records of other organs of the Tribunal.

The sharing of information and evidence with national authorities will continue to be a major element of our work, not only now but beyond completion and even under a residual mechanism. Combating international crimes requires an effective partnership between the Tribunals and national authorities. Access by such authorities to the vast databases of the Tribunals is indispensable for such a partnership. We shall continue to attend to requests for cooperation from States with all due diligence. In that respect, we welcome and commend Canadian authorities for the recently concluded successful prosecution in Canada of the first case of genocide in relation to the events in Rwanda. We also continue to support authorities in Belgium and other countries in respect of ongoing prosecutions.

In our last report to the Council, I indicated that serious concerns for potential loss of evidence over time, in particular in the cases of top-level fugitives, had prompted my Office to propose amendments of the ICTR Rules of Procedure and Evidence to provide for a procedure for the preservation of evidence in cases where fugitives continue to be at large. As the President has indicated, the Judges of the ICTR, meeting in plenary session on 1 October 2009, adopted the necessary amendment to the Rules. Accordingly, my Office proposes to request such proceedings, by the second quarter of 2010, in the cases of the three top-level fugitives, namely, Félicien Kabuga, Augustin Bizimana, former Minister of Defence, and Protais Mpiranya, former Commander of the Presidential Guard of Rwanda. The objective of the proceedings will be to enable the statements of prosecution witnesses, and even of defence witnesses, to be recorded before a judge, with a view to their use in a subsequent trial in the event that the witnesses are no longer available for good cause. In that way, we hope that the interests of justice will not be defeated by the loss of evidence in the wake of prolonged evasion of justice by fugitives.

While we focus on servicing pending trials, the preparation of new cases for trial, filing new requests for referral to Rwanda and instituting proceedings for the preservation of evidence in respect of the three top-level fugitives, we are also attending to, and will intensify preparations for, the closure of the Tribunal, with particular attention to archival and residual issues. Within my Office, the archiving of the records of the Investigations Division and of the trials that have been concluded is already proceeding in earnest.

All those activities will continue to require significant resources, as well as the cooperation of Member States, if the ICTR is to meet the goals of the completion strategy. In that respect, we look forward to the sympathetic consideration by Member States of the ICTR budget proposals for the 2010-2011 biennium. The cooperation of Member States and the support of the Security Council, the other organs of the United Nations and the Organization's Secretariat have been indispensable in the Tribunal's achievements. I would like to convey our appreciation for all such support. We look forward to that same cooperation at this crucial stage in the implementation of our completion strategy.

**The President** (*spoke in French*): I thank Prosecutor Jallow for his briefing.

I shall now give the floor to the members of the Council, beginning with Ambassador Mayr-Harting, Permanent Representative of Austria, in his capacity as Chairman of the Informal Working Group on International Tribunals.

**Mr. Mayr-Harting** (Austria) (*spoke in French*): At the outset, allow me to thank you, Mr. President, for

the kind words you addressed to me and my delegation. I should like in turn to congratulate you and your delegation on Burkina Faso's assumption of the presidency for the month of December. This month is always very difficult and busy, and we are therefore very happy that it will be in your very experienced hands. Of course, you will have our full support and cooperation throughout the month.

(*spoke in English*)

I would also like to thank the Presidents and Prosecutors of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for their briefings.

In my statement today, I will first address some issues about the completion strategies of the Tribunals. Secondly, as you have already said, Mr. President, in my capacity as Chairman of the Security Council's Informal Working Group on International Tribunals, I would like to give an update on the Group's activities.

Austria reiterates its strong support for the strengthening of international criminal justice, including through the International Criminal Court (ICC), ad hoc or mixed tribunals and truth commissions. We highly commend the work of the ICTY and ICTR, which carry out a crucial task in fighting impunity and bringing to justice those responsible for the most serious crimes. Austria fully supports the efforts of the Tribunals to complete their work at the earliest possible date. However, the most recent reports of the Tribunals (see S/2009/587 and S/2009/589) indicate that their work is not likely to be finished until 2013, or even 2014.

While the reported delays remain of concern — and we urge the Tribunals to take all possible measures to complete their work expeditiously — at the same time we have to accept the reality that the dates set forth in resolutions 1503 (2003) and 1534 (2004) will not be met. We believe that we have reached a point where the Security Council will need to adapt to the changed circumstances and extend the mandates of the judges beyond 2010 in order to allow the Tribunals to plan their trials and appeals for the coming years.

The arrest of the remaining 13 fugitives, including Ratko Mladić, Goran Hadžić and Félicien Kabuga, remains a top priority for the completion of the Tribunals' work. We call on all States concerned to fully cooperate with the Tribunals. With regard to the ICTY, we welcome the most recent report by the Prosecutor (see S/2009/589, annex II), in which he states that he is satisfied with the current level of efforts undertaken by the Serbian authorities in their cooperation with the Tribunal. We also welcome the continued efforts by the Croatian Government under Prime Minister Jadranka Kosor, in particular the recent establishment of the new task force. The task force concept has already been crucial to the ultimately successful efforts of Croatia and the international community to arrest General Gotovina and transfer him to The Hague. We welcome the most recent positive developments that the Chief Prosecutor has been able to report to us today. We are confident that the new task force and the intensive interaction and dialogue between the task force and the Office of the Prosecutor will help to rapidly address all outstanding issues on missing documents.

With regard to the ICTR, we welcome the cooperation of the Democratic Republic of the Congo and Uganda that led to the arrest of two fugitives during the reporting period.

As we already stressed this past June, the referral of cases to competent national jurisdictions is an essential part of the completion strategy. We therefore continue to encourage Rwanda's efforts to improve its judicial system and witness protection system and hope that those efforts will enable the Prosecutor to reapply for a referral of cases in early 2010.

I would now like to give a brief update on the activities of the informal Working Group on international tribunals since my most recent briefing in June (see S/PV.6134). The Group, which to date has held 21 meetings, has continued to meet on a regular basis to take forward the discussions on the establishment of the residual mechanism or mechanisms. Another meeting of the Working Group with the Presidents and Prosecutors of both Tribunals will take place this afternoon. The members of the Group has also met informally with the President of the Special Court for Sierra Leone and with representatives of the Netherlands, Rwanda and Serbia in order to continue the dialogue with affected countries and host countries of the Tribunals.

In mid-July, the Working Group started discussing the Secretary-General's report (S/2009/258) on the administrative and budgetary aspects of the

options for possible locations for the archives and the seat of the residual mechanism or mechanisms for the Tribunals. The report provides valuable information about the eight potential residual functions identified by the Tribunals, discusses the potential structure and organization of the future residual mechanism or mechanisms and provides tentative estimates for staffing and costs. It further analyzes 14 potential locations for the Tribunals' archives and the residual mechanism or mechanisms, which include 13 United Nations offices and the International Criminal Court. The report concludes with 13 recommendations addressed to the Security Council and the Tribunals.

On behalf of the members of the Working Group, I would like to take this opportunity to highly commend the Office of Legal Affairs for the preparation of this report, which provides an excellent basis for the Group's deliberations. In September, the Working Group already reached agreement on recommendations (l) and (m), which are addressed to the Tribunals and are contained in paragraph 259 of the report. By a letter dated 28 September 2009 (S/2009/496), the President of the Security Council confirmed that Council members welcomed those recommendations and requested that the Secretary-General write to the Presidents of the Tribunals to ask that they ensure that the listed tasks are carried out as part of their completion strategies and that they report to the Security Council on their progress in implementing these tasks as part of their regular reporting, which we have heard today.

In June and July, the Working Group also considered various requests by the Presidents of the Tribunals related to the completion strategies, including the extension of the judges' mandates, the appointment of additional ad litem judges and the redeployment of judges to the Appeals Chamber. On 7 July, following negotiations and the agreement reached in the Working Group, the Security Council adopted resolutions 1877 (2009) and 1878 (2009). By letters dated 29 September, 15 October and 6 November 2009, respectively, the Tribunal Presidents made some new requests for the extension of some of the judges' mandates. In this regard, the Working Group is currently discussing two technical draft resolutions, which are expected to be adopted in mid-December.

On 8 October 2009, in order to increase transparency, raise awareness and provide an opportunity to hear the views of expert speakers and the broader United Nations membership on the various key issues related to the establishment of the residual mechanism or mechanisms, the Permanent Mission of Austria organized an Arria formula meeting on residual issues of the ICTY and the ICTR open to all Member States. Invited speakers included the Presidents of ICTY and ICTR, the Assistant Secretary-General for Legal Affairs, as well as representatives of the International Committee of the Red Cross and the International Center for Transitional Justice. We are grateful to the many Member States who participated actively and for the interest they showed in the meeting. The meeting provided the Working Group with very useful input for its deliberations.

Next week, the Working Group will start its first reading of the new draft resolution on the establishment of an international residual mechanism for criminal tribunals, prepared by the Chair with the help of the Office of Legal Affairs and based on the recommendations in the Secretary-General's report. The negotiations on the resolution are expected to continue in the spring.

In conclusion, I would like to thank once again the Presidents and Prosecutors of the ICTY and ICTR for their briefings. I would also like to express our gratitude to all the members of the Working Group for their very active and constructive participation in our discussions.

**The President** (*spoke in French*): I thank Ambassador Mayr-Harting, as well as Presidents Byron and Robinson, for their kind words addressed to the presidency of Burkina Faso.

**Mr. Vilović** (Croatia): At the outset, allow me to extend my congratulations to you, Mr. President, and to your delegation for your assumption of the presidency of the Council for the month of December, which, as we all know, is not the easiest month. Let me assure you of the full cooperation of my delegation during your presidency. At the same time, I would like to thank Ambassador Mayr-Harting and his team for the excellent manner in which they chaired the Council in the month of November. I would also like to thank Ambassador Mayr-Harting for chairing the informal Working Group on international tribunals and the excellent deliberations he chaired in that respect. Allow me to also welcome Presidents Robinson and Byron, as well as Prosecutors Brammertz and Jallow, and thank

them for their contributions and their presence here today.

Since their establishment, the two Tribunals have had a profound impact on efforts to deny impunity for the serious crimes committed in the former Yugoslavia and Rwanda, which continue to haunt our collective conscience. We recognize their vital contribution to the fight against impunity, advancing the rule of law and paving the way for reconciliation and cooperation by providing justice and dignity to victims and by individualizing criminal accountability.

Croatia has been a staunch supporter of the mandate of the International Criminal Tribunal for the Former Yugoslavia (ICTY) since its inception. The Croatian Government is firm in its commitment to continue to provide its full and unequivocal support to the Tribunal's efforts to combat impunity by prosecuting those responsible for serious violations of international humanitarian law.

We look forward to the day when the Tribunals can close their doors and transition to a residual mechanism, but not before ensuring that those most responsible for the crimes committed face justice. We thus welcome the recent arrest of the high-level fugitives indicted by the ICTR and hope to see the early beginning of their respective trials.

We regret that the arrest of the remaining high-level fugitives still remains elusive for the ICTY, thus further complicating the projected completion strategy. Croatia firmly believes that the mandate of the ICTY cannot be declared complete without bringing to justice the two remaining fugitives: Ratko Mladic and Goran Hadzic, who have been indicted for the most atrocious crimes committed in Bosnia and Herzegovina and in Croatia, namely the massacres committed in Srebrenica and in Vukovar.

More than a year ago another high-profile fugitive was arrested — Radovan Karadzic. We regret to note that his case will enter the trial phase only next spring, despite the fact that more than a dozen years have passed since his indictment. We also regret to see the dismay that the trial delays have caused to victims and their families. We hope that a protracted trial will not repeat the scenario of the trial of Milosevic, whose death made impossible a sentence which would have clearly outlined the role of those most responsible for the atrocities committed in the former Yugoslavia. Locating and arresting high-profile fugitives must remain a priority, not just for the Tribunals but for the international community as well.

In facilitating the arrest of all suspects in the past, in a framework of close cooperation with the Office of the Prosecutor and in accordance with our constitutional law on cooperation with the ICTY, Croatia has established a solid and credible record of support for the fulfilment of the Tribunal's goals. In the same spirit, Croatia is now continuing its full cooperation with respect to the request regarding missing documents sought by the Office of the Prosecutor. This is particularly important in the light of the hearing scheduled for 16 December by the Trial Chamber, which is to assess this issue.

In that regard, let me express our appreciation for the Prosecutor's assessment indicating Croatia's determination to further pursue this path of full cooperation and the leadership shown by Prime Minister Jadranka Kosor in that respect.

While the administrative investigation has shown that the Republic of Croatia is not in possession of the requested documents, the establishment of a task force and the new findings mentioned by the Prosecutor clearly indicate the Prime Minister's determination not only in complying with the court's orders, but also going further in our pursuit to retrieve or fully disclose the fate of documents which are in the exclusive ownership of the Republic of Croatia. In pursuing this path, we look forward to developing even further our cooperation with the Office of the Prosecutor in this final push, with the aim of securing our common goal of serving justice, peace, reconciliation and, based on these values, a future of prosperity in South-East Europe.

Croatia appreciates the considerable efforts that the Tribunals are investing in expediting the timely completion of their work. We take note of the anticipated dates for the closure of the Tribunals, which will slip well into the next decade. While we share the concerns expressed about lengthy trials, we also recognize the need to be realistic. The early closure of the two Tribunals is a legitimate objective, but not at the expense of fair trial guarantees.

As a non-permanent member of the Security Council, for the past two years Croatia has been participating in the extensive deliberations of the Informal Working Group on International Tribunals, currently under the chairmanship of Austria, whose

efforts we greatly appreciate. Setting up a residual mechanism that will continue the essential functions of the Tribunals after their closure remains a pressing need. The credibility of such a mechanism will inevitably reflect on the legacy that the Tribunals are leaving behind. This is an issue of most direct relevance for the countries under the Tribunals' jurisdiction. My country hopes that the Council will be able to define timely solutions along the lines recently presented by the Chairman of the Informal Working Group and adopt the necessary decisions. We hope that our participation has helped the process by factoring in the experience of a county directly affected by a Tribunal's jurisdiction.

**The President** (*spoke in French*): I thank the representative of Croatia for the kind words he addressed to me.

**Mr. Churkin** (Russian Federation) (*spoke in Russian*): I wish you, Sir, and your delegation success as you assume the presidency of the Council for the month of December. We also thank Ambassador Mayr-Harting and the delegation of Austria for their leadership last month.

We thank the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for the information they provided on the situation in the Tribunals and their efforts to implement their completion strategies. Today's briefings give us a further opportunity to assess the results that the Tribunals have achieved, to formulate practical recommendations and to chart a course for the future.

Completing the work of ad hoc bodies of international criminal justice poses a complex and multifaceted challenge. It requires not only significant efforts by the courts themselves but also the assistance and oversight of the Security Council. Even bearing ongoing trials in mind, we can say with considerable certainty that, in both international law and political terms, the Tribunals are close to completing their missions.

A significant number of individuals who committed crimes have fallen into the hands of international criminal justice. The majority of them have been convicted and are serving their sentences. As instruments of post-conflict settlement, the Tribunals have played their role in restoring peace and political equilibrium in their respective regions. We also note the Tribunals' contribution to the development of national judicial systems and investigative organs; this will enable national bodies to work independently without prompting. There are now operationally independent judicial systems in Rwanda and the States that came into being in the territory of the former Yugoslavia. We see no basis for rejecting the sovereign right of those States to dispense national criminal justice, especially since those countries have stated their willingness to independently prosecute accused identified by the ICTY and the ICTR.

We therefore believe that it is time for the Security Council to adopt specific decisions on implementing measures set out in the completion strategies conveyed to the Tribunals six years ago in resolution 1503 (2003) and reaffirmed in resolution 1534 (2004). In that context, we must also address the issue of the deadline for extending the terms of the current judges. It is our view that in 2010 the Tribunals will maintain their current intensive pace of work. Trials — no matter how complex — must not drag on interminably.

For the successful completion of the Tribunals' mandates and in order to speed up the trials, it will be particularly to ensure effective cooperation by States, first and foremost States in the regions covered by the Tribunals. Here, we note the positive assessment of the level of cooperation by the Serbian authorities set out in the report of Prosecutor Brammertz (S/2009/589, annex II). We call on other countries to respond promptly and appropriately to requests by the Prosecutors of the Tribunals.

I note in conclusion the interesting and diverse proposals for carrying out residual functions of the Tribunals when they have completed their work. We expect the Security Council to come forward next year with optimal and mutually acceptable scenarios for establishing a residual mechanism for the Tribunals.

**The President** (*spoke in French*): I thank the representative of the Russian Federation for the kind words he addressed to me.

**Mr. Parham** (United Kingdom): I offer you warm congratulations, Sir, on your assumption of the presidency of the Council for this month. We very much look forward to working with you, and we assure you of our full support. We are very grateful also to Ambassador Mayr-Harting and the Austrian delegation

for their distinguished presidency of the Council last month. We are also very grateful to Presidents Byron and Robinson and Prosecutors Jallow and Brammertz for their latest reports and for their briefings this morning.

My Government also associates itself with the statement to be made later by the representative of Sweden as President of the European Union.

The United Kingdom welcomes the further progress that has been made in implementing the completion strategies of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) over the past six months. We acknowledge the measures taken by the two Tribunals to expedite proceedings, but we remain concerned that the latest reports indicate further slippage in the timelines for final completion. We recognize that some delays have been caused by factors outside the Tribunals' control, such as the illness of accused or counsel and, in the case of ICTR, by the welcome arrests of two fugitives. Nevertheless, we urge both Tribunals to take all necessary steps to keep the trial and appeal schedules on track. In that context we would welcome confirmation from President Robinson and President Byron that all current Trial Chambers are sitting full time to hear their cases.

We have noted the comments of both Presidents concerning the terms and conditions of staff and judges of the Tribunals, and those points will need to be addressed by the appropriate organs of the General Assembly. While the primary responsibility for ensuring timely completion lies with the Tribunals themselves, the Security Council must also play its part. It particular, it is our responsibility to take the necessary decisions to extend the mandates of those judges who need to be retained by the Tribunals to complete the remaining cases.

It is clear from the forecasts by the Presidents that even with expedited procedures, trial work will not be complete until 2011-2012 and appeal work not until mid-2013 — provided that additional resources are reallocated to the Appeals Chamber. While we regret the delay, we must accept the reality of those timelines and act accordingly. If the Security Council fails to extend judicial mandates until the last minute, there is a risk that the uncertainty created will cause more judges to leave before completion of their cases, thus generating greater disruption in the Tribunals' ongoing work.

As my Government has made clear on many occasions, full cooperation by all States is vital to ensure the completion of the mandates of the ICTY and ICTR. In particular, the remaining fugitives — two in the case of ICTY and 11 in the case of ICTR — must be located and surrendered to The Hague and Arusha. We reiterate that the mandate of the Tribunals will not be complete until those individuals have been brought to justice.

My Government appreciates the detailed assessments of cooperation by States in the region of the former Yugoslavia provided by the Prosecutor of the ICTY, Mr. Serge Brammertz. In relation to Croatia, we agree that the establishment of the Task Force is a positive step, and we welcome it. Nevertheless, my Government is disappointed that the Croatian Government has not sufficiently demonstrated to the Prosecutor that they have pursued all avenues of investigation and that key requested documents relating to the Gotovina case remain to be found or accounted for. We welcome the further developments reported by the Prosecutor this morning and urge Croatia to achieve full cooperation by taking the necessary further measures to complete a comprehensive and credible investigation towards finding or accounting for missing documents.

We are very pleased by Serbia's sustained improvement over the last six months, as reported by the Prosecutor, which demonstrates its increased commitment to cooperation with ICTY. We support the Prosecutor's view that it is essential that Serbia maintain the current level of cooperation in tracing the fugitives Ratko Mladić and Goran Hadžić.

In the case of ICTR, we welcome the intensification of the Prosecutor's efforts to track fugitives, which has led to the recent arrest and surrender to the Tribunal of two fugitive indictees. We also welcome the cooperation provided by Uganda and the Democratic Republic of the Congo in facilitating those arrests. The transfer of Idelphonse Nizeyimana to Arusha only one day after his arrest in Uganda is an example, as President Byron said, of swift and efficient cooperation by a Member State with the Tribunal. Nevertheless, it is deeply unsatisfactory that so many ICTR fugitives remain at large, and we call on all

United Nations Member States to cooperate in this issue.

In particular, we regret that Kenya has not responded to the Prosecutor's requests for information. We urge the Kenyan Government to step up its level of cooperation with the Tribunal and to share any information that it may hold on the current whereabouts of Félicien Kabuga. If I remember correctly, when the Council debated these issues last June, the representative of Kenya said that his Government was certain that Kabuga had left Kenya. That, of course, meant that the Kenyan Government knew that Kabuga had been in Kenya and begged the question what evidence they had of his presence in Kenya and his subsequent departure, and what they could do with that evidence to help track Kabuga's current location.

My Government notes the Prosecutor's intention to refer this matter formally to this Council, and in any case we would welcome more detailed assessment of State cooperation in the ICTR Prosecutor's future reports. The Security Council needs to be kept fully informed of developments in tracking the fugitives to enable us to consider all options.

Finally, I would like to look forward to the establishment of a residual mechanism to carry out the essential functions of the Tribunals that need to be continued following completion of their trial and appeal work, such as witness protection, review of judgements, sentence enforcement, management of archives and, if necessary, trial of fugitives. We consider that the Tribunals should do everything possible to refer all appropriate cases to national jurisdictions to reduce the trial burden of the residual mechanism. In that context we warmly welcome the effort being undertaken by Rwanda to enhance the capacity of their judicial system to facilitate referrals, efforts which my Government is supporting.

Establishment of that mechanism will be vital for the legacy of the Tribunals. We welcome the report of the Secretary-General issued earlier this year, which provides useful guidance to the Security Council on how these issues can be managed (S/2009/258). We also recognize and appreciate the preparatory work undertaken by both Tribunals in making ready for the establishment of the mechanism, including implementation of recommendations in the Secretary-General's report.

My Government will continue to play an active role in the ongoing discussions under the able chairmanship of Austria. We hope we will be able to reach agreement in the first half of next year on a resolution on the establishment of the residual mechanism. Even though final completion of the Tribunals' work is still some way off, it is important that we take timely decisions, particularly on location and core functions of the mechanism, to allow for orderly planning of the completion and post-completion phase of the Tribunals' activity.

**The President** (*spoke in French*): I thank the representative of the United Kingdom for the kind words he addressed to me.

**Mr. Le Luong Minh** (Viet Nam): On behalf of the delegation of Viet Nam, I warmly congratulate you, Sir, and your delegation on assuming the presidency of the Security Council for this month. In discharging your important task, you and your delegation can rely on the fullest cooperation of my delegation. I would also like to convey to Ambassador Thomas Mayr-Harting and the delegation of Austria our sincere appreciation of their effective leadership of the work of the Council in November.

I thank the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for their briefings and their comprehensive reports on the work of the two Tribunals.

My delegation notes with appreciation the commitment of the Tribunals to accomplishing their completion strategies as soon as possible. While making efforts to complete a large amount of trial work, both Tribunals have also undertaken measures, as recommended by the Secretary-General, [1] in preparations for the transition to the residual mechanism.

In adopting resolution 1534 (2004), the Security Council expressed its determination to review the implementation of the Tribunals' completion strategies and to ensure that the timeframes set out in the completion strategies and endorsed by resolution 1503 (2003) would be met. At present, both Tribunals estimate their completion date of all appeals to be between the end of 2012 and mid-2013. That will require that the Security Council consider proper adjustments to facilitate the Tribunals' efforts to

complete their mandates without further slippage. We urge the Tribunals to take all necessary measures to meet the requirements of the completion strategies, and we call on all Member States to extend full cooperation with a view to helping the Tribunals with an early completion of their work.

We support all efforts aimed at strengthening competent national judicial systems to facilitate the transfer of cases involving intermediate- and lower-rank indictees, including fugitives, from the Tribunals to national jurisdictions.

Before concluding, I wish to express our high appreciation of the work of the Council's Informal Working Group on international tribunals concerning a possible residual mechanism to replace the ICTY and the ICTR in their post-completion period. The Working Group has been able to reach numerous common understandings providing the basic elements of an initial draft resolution on such a residual mechanism. Viet Nam encourages the Working Group to continue its deliberations, in close collaboration with the Tribunals, to finalize the draft resolution.

**The President** (*spoke in French*): I thank the representative of Viet Nam for his kind words addressed to me.

**Mr. Araud** (France) (*spoke in French*): At the outset, I would like to congratulate our Austrian colleague for the way in which he presided over the Council in November. I would also like to convey to you, Mr. President, our best wishes for your presidency for the month of December. We know that you will carry out these functions with the necessary firmness and effectiveness. I would like to add that the fact that your presidency is being conducted in French will only lend more clarity, logic and elegance to our work. I see that my statement has earned unanimous approval around the table.

I would like to thank the Presidents and Prosecutors of the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for the Former Yugoslavia (ICTY) for their presentation of their reports. France endorses the statement to be made by the representative of Sweden on behalf of the European Union.

The briefings we have heard confirm that the deadlines set in the completion strategies for the Tribunals will be missed and that their work will continue beyond 2010. The Security Council must consider the consequences of this. The first thing to do is to give the Tribunals the means to complete their trials and appeals as soon as possible, in full compliance with the rules of fairness and justice. The mandate of the appeal judges must be immediately extended to 31 December 2011. The Tribunals must be able to exceed the authorized tenure for ad litem judges by one more year. We hope that, in these decisions, the Security Council will make clear its resolve to ensure that the Tribunals will be able to bring their work to a successful conclusion. Nevertheless, the delay in implementing the Tribunals' completion strategies remains of concern, and we ask the Tribunals to redouble their efforts to step up the effectiveness and pace of the work of the Trial and Appeal Chambers.

The work of the Prosecutors is particularly essential to tracking fugitives, whose arrest and transfer to the Tribunals is a priority. The fact that some accused remain at large is one of the major areas of uncertainty hindering the completion strategies. The mission of the Tribunals will not be accomplished so long as these individuals have not been arrested and tried.

In this regard, the Serbian authorities' arrest of Mr. Karadžić was a major step forward for the ICTY. We now await the arrests of Mr. Mladić and Mr. Hadžić. Serbia must continue on the path that its Government has recently taken. Full cooperation with the ICTY, be it in tracking fugitives or bringing them to justice, is an essential element of the stabilization and association strategy being pursued by the European Union for all countries in the region of the former Yugoslavia. We trust in the efforts of Croatia to resolve pending issues.

With respect to the ICTR, we commend the arrest and transfer of two fugitives to Arusha in the period under review. Eleven of the accused, including three of highest rank, remain at large. We call on all concerned States to provide Prosecutor Jallow with the necessary cooperation. We reiterate our request to Kenya to fulfil its obligations with respect to the arrest and transfer of Félicien Kabuga to the ICTR. We welcome Rwanda's efforts to overcome legal obstacles to the referral of cases to its jurisdiction, allowing it to try lower-rank fugitives. Ensuring the protection of witnesses remains critical.

I would recall that, if the problem of fugitives is not resolved quickly, it will have to be addressed in the context of the legacy of the Tribunals. Indeed, it would be unacceptable for the Tribunals' closure to entail impunity for those who are at large. This function will fall to the residual mechanism carrying out essential functions once the Tribunals are closed. The Security Council Informal Working Group on international tribunals has continued to work on this subject under the effective leadership of Austria, for which we are grateful.

An examination of the Secretary-General's report on this subject (S/2009/258) will allow the Group to consider the topic more deeply. The report contains a number of recommendations addressed to the Tribunals on immediate preparations for the transition to the residual mechanism. My country, eager to ensure that the Council adopts a timely decision on preserving the integrity of the Tribunals' legacy, is participating in that work. The solution must meet the criteria of simplicity, modesty and economy. It must avoid all duplication and, indeed, should make use of services provided by other institutions.

**The President** (*spoke in French*): I thank the representative of France for his kinds words addressed to me.

**Mr. Okuda** (Japan): At the outset, let me join previous speakers in congratulating you, Sir, on your assumption of the presidency of the Security Council for December. We are grateful to Ambassador Mayr-Harting and his team for the excellent leadership with which they successfully conducted the work of the Council in November. I would also like to thank the Presidents and Prosecutors of the Tribunals for briefing us on the latest developments in their completion strategies.

The contribution of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to the development of international criminal law cannot be overstated. In this regard, we would like to extend our appreciation to all the judges, prosecutors and staff for their devoted efforts to ensure the fair and expeditious operation of these important judicial bodies.

Japan expected and strongly urged the Tribunals to complete all judicial proceedings in 2010, in accordance with Security Council resolution 1503 (2003). We recall that, in their most recent reports (S/2009/394 and S/2009/396), the two Tribunals have affirmed that this was unrealistic on the basis of their latest estimates. Japan notes with gratitude the efforts made by the two Tribunals to minimize the delays in the proceedings, while ensuring fair trials. We strongly encourage the Tribunals to continue their efforts to complete their work as expeditiously as possible.

Regarding particular requests by the Tribunals, such as for the extension of their judges' terms, we have been informed that these measures are necessary in order to accomplish the completion strategy in an expeditious and cost-effective manner. Based on this understanding, Japan is prepared to work on the necessary measures to be taken by the Council. We also note the remarks on the necessity of staff retention to the work of the Tribunals.

It is clear that the arrest of the remaining fugitives is of paramount importance to the success of the Tribunals. We commend the authorities of the Democratic Republic of the Congo and Uganda for the arrest and transfer to the ICTR of Grégoire Ndahimana and Idelphonse Nizeyimana. On the other hand, it is regrettable that two suspects indicted by the ICTY, Ratko Mladić and Goran Hadžić, and 11 others under indictment by the ICTR, including Félicien Kabuga, have yet to be apprehended. We encourage the relevant States to cooperate in order to secure the arrest of all indictees as early as possible.

The referral of cases is an important part of the completion strategy. In this regard, we appreciate the efforts made by the Rwandan authorities to facilitate the referral of cases, including the establishment of a witness protection service within the Rwandan judiciary.

With regard to the ICTY, cooperation from States of the former Yugoslavia in such areas as access to archives, documents and witnesses is also vital. We take positive note of the initiative taken by Croatia to accelerate cooperation in response to the request of the Prosecutor in relation to the missing documents. We also take positive note of the improved cooperation of Serbia and the adequate response of Bosnia and Herzegovina to the requests of the Prosecutor. We encourage them to continue their efforts in this regard.

Given that the ICTY and the ICTR were established by Security Council resolutions adopted under Chapter VII of the Charter in an exceptional manner, they are facing challenges unique to ad hoc

tribunals, including the need for a residual mechanism after completion, which was not fully anticipated at the time of their establishment. Japan attaches great importance to the rule of law, and considers that impunity for the most serious crimes must not be condoned and that the individuals involved must be brought to justice in accordance with international standards. The residual mechanism should serve to this end, while efforts must be made to maintain as cost-effective a system as possible.

We welcome the report of the Secretary-General on the administrative and budgetary aspects of residual mechanisms dated 21 May 2009 (S/2009/258), submitted pursuant to the Council's presidential statement of 19 December 2008 (S/PRST/2008/47). The report provides a valuable basis for our discussion in the Informal Working Group on international tribunals under the chairmanship of Austria. We thank both Tribunals for including in their reports preparatory measures taken for the transitional period, which the Informal Working Group requested based on the recommendation of the report. We will continue to take active part in the discussion on the residual structures to be established, paying due attention to the progress of the proceedings at the Tribunals.

**The President** (*spoke in French*): I thank the representative of Japan for his kind words addressed to me.

**Mr. Liu Zhenmin** (China) (*spoke in Chinese*): At the outset, the Chinese delegation wishes to congratulate Burkina Faso on its assumption of the presidency of the Security Council for the month of December. We also congratulate Austria on its successful presidency last month. I thank President Robinson, Prosecutor Brammertz, President Byron and Prosecutor Jallow for their briefings this morning.

We note that since the Security Council established the completion strategies for the two Tribunals, both have worked diligently to implement the strategies and made sustained progress, which we appreciate and commend. There is only one year left before the deadline established for the completion strategies, but trial work is still proceeding within the Tribunals. It is unlikely that all the work will be completed on schedule. In that regard, the anticipated date for the completion of all appeal cases by the International Tribunal for the Former Yugoslavia (ICTY) has been pushed back to 2014, while the International Criminal Tribunal for Rwanda (ICTR) will complete most of its trial work in 2010, although the date for the completion of appeal cases has been pushed back to 2013.

We note the many reasons for such delays and that certain factors therein were unanticipated by the Tribunals. However, the completion strategies established as an overall goal by the Security Council must always be followed by all actors. We hope that, based on their past efforts, the Tribunals will explore further effective working methods to accelerate the task of fulfilling the completion strategies.

We note that, according to the ICTY's report (S/2009/589), between 2005 and 2007 eight cases were referred to the relevant national judicial organs and that no cases now remain eligible for referral. The report of the ICTR (S/2009/587) fully recognizes that the effort to refer relevant cases to national jurisdictions is a critical element of the completion strategy and reaffirms the Tribunal's commitment to ongoing efforts in that regard. We reiterate that strenuous efforts to refer cases and transfer fugitives to willing and capable countries are key tasks of the completion strategies. We hope that the two Tribunals will continue to adopt measures to that end, and call on the countries concerned to cooperate fully with them.

We are pleased to note that, at the request of the Security Council, the reports of the two Tribunals refer to the implementation of the recommendations contained in paragraph 259 of the report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the ICTY and the ICTR and the seat of the residual mechanism or mechanisms for the Tribunals (S/2009/258). That implementation will help the two Tribunals to transition successfully to the residual mechanism or mechanisms in the future. We hope that the Tribunals' efforts to that end will enjoy early and substantive success.

The Security Council's Informal Working Group on international tribunals is discussing the issue of a residual mechanism for the two Tribunals and will hold consultations on a relevant draft resolution. We thank the Informal Working Group for its efforts. We appreciate the contributions of the Austrian delegation in that respect and the comments and suggestions of the Tribunals to the Working Group in this process. We hope that the Working Group's efforts will help to

promote the implementation of the completion strategies.

**The President** (*spoke in French*): I thank the representative of China for his kinds words addressed to me.

**Ms. DiCarlo** (United States of America): Let me begin by congratulating you, Sir, on assuming the presidency of the Council in December and by assuring you of my delegation's full cooperation during this busy month. Let me also thank Ambassador Mayr-Harting and the delegation of Austria for their excellent stewardship of the Council last month.

I should like today to welcome the Tribunal Presidents and Prosecutors back to the Council and thank them for their assessments. The United States commends the representatives and staff of the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for the Former Yugoslavia (ICTY) for their work to bring the perpetrators of some of the world's most heinous crimes to justice. We particularly appreciate the efforts of ICTR President Byron, ICTY President Robinson, Prosecutors Brammertz and Jallow, and Registrars Dieng and Hocking. We salute their continued dedication to the cause of justice as they prepare for the closure of the Tribunals. An efficient closure that continues to support the victims and ensures that they receive a measure of justice for these crimes will require difficult, dedicated work.

The United States believes it is important to create a residual mechanism to manage the necessary functions of the Tribunals after the completion of their pending trials and appeals. We thank the Secretary-General for his report on the administrative and budgetary aspects of such a mechanism (S/2009/258), which will help decision makers develop an effective and cost-efficient one. We urge both Tribunals to continue to strive to complete their work by the earliest possible date, and we thank the Security Council Working Group chaired by Austria for its efforts to address and resolve residual issues.

We must remember why the Tribunals were established — to identify and hold accountable those responsible for some of history's worst crimes. We must not lose sight of the historic importance of this task. We must work to establish residual mechanisms that do not allow the 13 outstanding ICTY and ICTR fugitives to escape justice. Individuals indicted by the Tribunals who remain at large must be apprehended and brought to justice without further delay. We call on all States to fulfil their legal obligations to cooperate with the Tribunals and to take the necessary steps to ensure that the remaining fugitives are apprehended.

In particular, I should like to underscore the need to reinforce efforts to bring ICTR fugitive Félicien Kabuga to face international justice. We are concerned that the Government of Kenya has not responded to the Tribunal's request for certain Government records relating to Kabuga's assets and has not provided details to support the claim that Kabuga has left Kenya. We urge Kenya to act immediately on the Tribunal's recommendations and to take effective steps to deny Kabuga access to his support networks.

The United States acknowledges Rwanda's desire to receive transferred cases from the ICTR. We commend the Prosecutor's support for that effort as well as the work by the Rwandan Government and others to build up capacity in the Rwandan legal system to make such transfers possible. We welcome the transfer last month of eight individuals convicted by the Special Court for Sierra Leone to Mpanga Prison in Rwanda, an achievement that highlights Rwanda's growing capacity and commitment to meeting international standards. The ICTR's ability to transfer cases to Rwanda and other States as appropriate is a critical step towards meeting the Tribunal's completion strategy.

The United States commends the efforts of States to cooperate with the ICTY, but vital duties remain unmet. The two remaining fugitives, Ratko Mladić and Goran Hadžić, must be arrested and transferred to the Tribunal to face justice. Cooperation with the ICTY remains a fundamental obligation for all States in the region. We commend the Government of Serbia for its improved cooperation and we urge it to continue to do everything in its power to locate, arrest and transfer Mladić to the Tribunal. The arrests of Mladić and Hadžić are important for the successful completion of ICTY's mandate, for Serbia's full Euro-Atlantic integration and for the cause of justice and accountability.

We welcome Croatia's efforts to response to the Trial Chamber's September 2008 order to deliver artillery documentation from Operation Storm or engage in a credible investigation into its fate. We believe that latest ongoing investigation and

establishment of a task force by the Government of Croatia are significant steps forward. At the same time, we encourage the Croatian authorities to explore additional measures, such as using outside expertise and more aggressive investigative techniques that might help recover additional documents.

Bosnia and Herzegovina has made great strides to cooperate with the Tribunal, and ICTY has done a commendable job in supporting the development of domestic courts. But last month, the High Representative for Bosnia and Herzegovina informed us that domestic war crimes prosecutions and reform of the justice sector have suffered due to the inability of leaders to reach political decisions that advance national goals. We note the critically important work that international judges are doing in that country and we support the extension of their mandate beyond December. International judges and prosecutors have worked tirelessly to bring justice to the victims of atrocities regardless of ethnicity.

I wish to thank again the Presidents, Prosecutors, Registrars and Tribunal staffs for their dedication. Their work remains critically important to the fight against impunity and for stability and reconciliation in the regions involved.

**The President** (*spoke in French*): I thank the representative of the United States for the kind words she has addressed to me.

**Mr. Apakan** (Turkey): At the outset, I should like to congratulate you, Mr. President, on your assumption of the presidency of the Council for the month of December. I am sure that, under your able guidance, the Council will enjoy a smooth and productive programme of work. I should also like to express our sincere appreciation to Ambassador Thomas Mayr-Harting and the entire Austrian Mission for their excellent leadership of the Council during the month of November.

I wish to thank the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and of International Criminal Tribunal for Rwanda (ICTR) for their comprehensive briefings. Turkey greatly values the important work carried out by the Tribunals in combating impunity and providing justice to the victims of violations of international humanitarian law committed on the territories of the former Yugoslavia and of Rwanda. We commend the judges, prosecutors and staff for their dedication and hard work.

Despite the continued efforts of both Tribunals, the projected dates for the completion of their work will not be met, as indicated in the reports of the Tribunals (S/2009/587 and S/2009/589). We acknowledge that the delay in the trial schedule mainly resulted from a number of reasons that are not immediately within the control of the Tribunals. We nevertheless urge the Tribunals to continue to implement the completion strategies and complete their work at the earliest date possible, while ensuring international judicial safeguards and standards.

Cooperation between Member States and the Tribunals is essential for the successful completion of the Tribunals' mandates. In that regard, we welcome the cooperation by Uganda and the Democratic Republic of the Congo in the recent arrest and transfer of two fugitives to the ICTR. We also welcome Prosecutor Brammertz's report of improved cooperation by Serbia, and we share the hope that that improved cooperation will result in the apprehension of the fugitives Ratko Mladić and Goran Hadžić in the near future.

The arrest of the remaining fugitives sought by ICTY and ICTR continues to constitute a top priority for the completion of the Tribunals' work. All those responsible for violations of international humanitarian law committed on the territories of the former Yugoslavia and Rwanda must be brought to justice, and we appeal to all States to cooperate with the Tribunals so as to ensure the arrests of the remaining fugitives.

Prosecutor Brammertz's report (S/2009/589, annex II) also states that Croatia and Bosnia and Herzegovina have adequately responded to requests for assistance by the Office of the Prosecutor of the ICTY. We welcome the continued efforts of both countries in order to fulfil their obligations to cooperate with the ICTY. In that context, the establishment of a task force by the Croatian authorities is a positive and important step forward.

The referral of cases to national jurisdictions is another important element of the fulfilment of the Tribunals' mandates. The international community should provide support, where necessary, in order to strengthen the capacity of the national institutions of the concerned countries. We welcome Rwanda's efforts

to meet the requirements for the referral of cases to its jurisdiction.

Finally, as highlighted by the Presidents of the Tribunals, retaining qualified staff is also of great importance for the timely completion of the mandates. Thus, both Tribunals should be provided with the necessary means so that the judicial capacity of the Tribunals can meet the current circumstances. Turkey is ready to support every step in that direction.

Since their inception, the ICTY and ICTR have made important contributions to international criminal justice. As we are now approaching their closure date, we also need to tackle legacy and residual issues. The Informal Working Group on the International Tribunals has been working intensively on those issues under the chairmanship of the Austrian delegation and with the valuable assistance of the Office of Legal Affairs.

The report of the Secretary-General on the administrative and budgetary aspects of the residual issues has greatly contributed to the discussions in the Working Group, and we are pleased to note that the Tribunals have already commenced the work on the recommendations contained in the report. We are looking forward to intensifying our discussions in the Working Group with a view to reaching an agreement on the residual issues in the near future.

**The President** (*spoke in French*): I thank the representative of Turkey for the kind words he addressed to me.

**Mr. Heller** (Mexico) (*spoke in Spanish*): First of all, I would like to express our best wishes and offer our cooperation to the delegation of Burkina Faso for the conduct of the Council's work during December. I would also like to thank the Burkina Faso delegation for the close cooperation we developed with them in the Security Council over the past year. Mexico would like to acknowledge Ambassador Mayr-Harting and the Austrian delegation for their excellent work as President of the Security Council in November.

My delegation would like to thank the Presidents and Prosecutors of the International Tribunals for Rwanda and the Former Yugoslavia for presenting their respective biannual progress reports (S/2009/587 and S/2009/589) on the completion strategies of their activities, including the specific measures they have adopted to conclude their work, as well as the progress made in fulfilling the recommendations of paragraph 259 of the Secretary-General's report (S/2009/258), which the Council endorsed.

We acknowledge the efforts by both Tribunals to accelerate the completion of their judicial activities in a responsible and efficient way, guaranteeing the main objective of imparting justice and respecting the due process rights of the accused. We are aware that judicial activity will always be subject to a series of unforeseen conditions and circumstances and that both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) face them in the best way possible. However, the actions already undertaken by both Tribunals give us the confidence to urge them to implement additional measures to conclude their work and give weight to the establishment of a residual mechanism.

With regard to the report of the International Criminal Tribunal for Rwanda, we wish to emphasize some of the progress that has been made, in comparison to the biannual report of last June. A significant number of sentences have been pronounced and several trials are close to sentencing, that is, before the end of this year. Two fugitives have been arrested — one of them of a high rank — thanks to cooperation by neighbouring States, the Democratic Republic of the Congo and Uganda. Significant measure have been adopted with regard to criminal procedures to preserve the necessary evidence to begin the trials that we all hope will take place in the near future against those accused who are still at large.

Regarding the report of the International Criminal Tribunal for the Former Yugoslavia, the transfer to national jurisdictions of cases of mid- and low-level accused stands out. That contributes to strengthening the national capacities of countries in the region to handle serious violations of international humanitarian law. Additionally, data on the progressive reduction of judicial activity are relevant in that the residual mechanism can have a judicial function limited to accused of the highest rank.

We have taken note of the valuable judicial cooperation by the Government of Croatia, and we encourage it to continue in the same way with issues pending before the Tribunal. Unfortunately, we have also taken note — and this is an insult to the international community — of the need for all States, not just the States in the region, to end the impunity

that two of the main perpetrators of the most serious human rights violations in the Balkans have continued to enjoy.

Both Tribunals have emphasized the need to maintain their staff and to extend certain mandates of some judges in order to meet the dates that the Council has established for the completion of their tasks. We should not overlook the fact that the Tribunals have to face the ongoing challenge of achieving a balance between imparting justice, administrative efficiency, guaranteeing the fundamental rights of the alleged perpetrators, witnesses and victims, and completing their work as soon as possible. Nor can we underestimate the fact that that task is doubly difficult in the context of judicial proceedings. For those reasons, the Security Council should continue, in our opinion, to have a pragmatic and flexible approach with regard to the Tribunals' completion strategies. We believe the best option would be for them to conclude their work in the very near future, but not because of peremptory dates.

Progress in the implementation of the completion strategies, which the Tribunals have shared with us, can contribute to the establishment of the residual mechanism in a more manageable and efficient way. In the coming months we will be giving shape to the residual mechanism in the framework of the Informal Working Group on the International Criminal Tribunals, on which our colleague from Austria has given a very detailed summary. We have a very important foundation for that, thanks to the Secretary-General's report and to the first-hand, detailed information on each of the functions to be assumed by the mechanism that those in charge of the Tribunals have just presented to us, information based on experience.

Even in the midst of those minute considerations, the Security Council must continue to observe the principal goal, which is that of guaranteeing the carrying out of justice with regard to the most serious crimes and atrocities against humanity that were committed in the context of conflict in the former Yugoslavia and Rwanda. Mexico will continue working in the next few months to contribute to the successful implementation of the completion strategies of both Tribunals and the establishment of the residual mechanism.

**The President** (*spoke in French*): I thank the representative of Mexico for the kind words he addressed to me.

**Mr. Urbina** (Costa Rica) (*spoke in Spanish*): My delegation is pleased to see you, Sir, presiding over our work for the month of December. We are sure that your skills, experience and leadership and the support of your delegation will contribute to the success of our work. I would also like to thank the Austrian delegation and Ambassador Mayr-Harting for their excellent work in November, which enabled us to successfully complete the Council's work.

I wish to begin by thanking the Presidents and Prosecutors of the International Tribunals for Rwanda and the Former Yugoslavia for their briefings. Costa Rica acknowledges, and thanks them for, their efforts to pursue the completion strategies set in resolutions 1503 (2003) and 1534 (2004).

Based on the conviction that lasting peace is inseparable from justice, Costa Rica has supported all efforts of the international community to strengthen the international criminal justice system. We have thus contributed to the development and consolidation of a cluster of institutions, one that is new in international law, to prevent the most serious crimes, stop impunity and guarantee redress.

The Security Council Informal Working Group on International Tribunals has achieved significant progress in its debate on the essential functions which should remain active once the Tribunals complete their pending cases. Costa Rica stresses the importance of the agreements reached on the need for the Tribunals to transfer new cases to national tribunals where appropriate and on the need to continue to strengthen capacity in the affected countries. There is no doubt that an important part of the legacy of both Tribunals will be their achievements in transferring skills and building capacity in the judicial systems of countries under their jurisdiction.

Despite this progress, Costa Rica regrets that the necessary consensus has not been reached on the elements of a new resolution which should provide greater precision on the closure of both Tribunals and agreement on the functions of the residual mechanism or mechanisms.

Costa Rica appreciates and is grateful for the Secretariat's report on the administrative and budgetary

aspects of the options for possible locations for the archives of the Tribunals and the seat of the residual mechanism(s) for the Tribunals (S/2009/258). We acknowledge that the archives are the property of the United Nations, but we would like to stress their condition as historical memory and instruments of reconciliation and peace, which belong fundamentally to the countries under the jurisdiction of the Tribunals.

Before closing, I would like to draw attention to the priority nature of the arrest of fugitives for the completion of the work of the Tribunals. Without the prosecution of these fugitives, particularly Kabuga, Mladic and Hadzic, the implementation of the Tribunals' mandates would be incomplete. Costa Rica calls on all States to cooperate with the Tribunals and to comply with Council resolutions and provide any information that would indicate the whereabouts of the fugitives.

On taking stock of the work of the two international Tribunals, we would like to acknowledge the steps taken by Croatia to improve its cooperation with the ICTY, and we hope that they will be successful. Costa Rica acknowledges and thanks the judges, Prosecutors and staff for their contributions and supports them in their efforts to implement the completion strategies in the most efficient way possible. We also call for the consideration of measures to curb the turnover of technical staff of the Tribunals, in the hope that its staff will obtain the same contractual terms and conditions as other United Nations officials.

**The President** (*spoke in French*): I thank the representative of Costa Rica for the kind words he addressed to me.

**Mr. Rugunda** (Uganda): I wish to congratulate you, Sir, on your assumption of the presidency of the Security Council for this month. I assure you of our full support and cooperation. In the same breath, I would like to salute Ambassador Mayr-Harting for the very able manner in which he and his country presided over the Council last month.

We welcome The Honourable Justice Byron, President of the International Criminal Tribunal for Rwanda, and The Honourable Justice Robinson, President of the International Tribunal for the Former Yugoslavia, and thank them for the briefings. We also thank Prosecutor Brammertz and Prosecutor Jallow for their briefings. Uganda appreciates the tremendous work carried out so far by the Tribunals. We attach great importance to the delivery of justice and the fight against impunity for persons who bear the greatest responsibility for heinous crimes and violations of international humanitarian and human rights law.

In resolutions 1503 (2003) and 1534 (2004), the Security Council set a deadline and called upon the Tribunals to take all measures possible to complete all trial activities. It stressed the importance of fully implementing the completion strategies. It is now obvious that these targets cannot be met due to intervening circumstances outside the control of the Tribunals. The arrest of Karadzic, in the case of the Tribunal for the Former Yugoslavia, as well as, more recently, the arrest of Nizeyimana in Uganda, shows that dispensing justice cannot be adequately guided by deadlines. Since the Tribunals have no police forces of their own but depend upon the cooperation of States, we call upon States to cooperate with the Prosecutors and help in the arrest and transfer of the remaining fugitives.

Even when the Tribunals' mandates are over, there are residual issues that will remain until the last sentence is served. Certain functions of the Tribunals will not necessarily terminate upon the conclusion of the trials and appeals. The fugitives, if and when they are apprehended, the convicts serving sentences, and the witnesses and victims that may still be under protection will still need oversight by the mechanisms. There is no substitute for programmes such as those that provide protection for victims and witnesses. We note, for instance, the challenges of residual issues which are also of concern to other interim judicial tribunals. Perhaps the only sure way of avoiding interim measures is to consider embracing permanent institutions such as the International Criminal Court.

Uganda fully supports an expeditious improvement in the conditions of service for the ad litem judges.

We welcome the measures taken to preserve and manage the archives. My delegation is aware that the archives are the property of the United Nations, but we are also cognizant of the need to keep them in their respective regions, along with the residual mechanisms for ease of access by the primary stakeholders: the victims of these heinous crimes.

We welcome the formation of a genocide awareness-raising network being conducted in Rwanda

by the Tribunal and call upon those who are able to contribute to this effort to do so. The training of Rwandan jurists, including training in international criminal law, is welcome, as it ensures that there will be adequate preparation for the courts in Rwanda to handle the cases that are not handled by the Tribunal. The reported high demand for future training strengthens the case for keeping the archives and residual mechanisms in the region. Uganda therefore recommends the establishment of two mechanisms, one in the African region and the other in The Hague.

Witness intimidation leads to delay in the trial process and should be curbed by appropriate measures to ensure that the ultimate credibility of the process is not put in doubt. We therefore support the allocation of the necessary resources towards that end. The formation of three Appeals Chamber benches to deal expeditiously with the anticipated appeals is also welcome. The holding of two separate sittings per day by the International Tribunal for the Former Yugoslavia ensures maximum utilization of the limited number of courtrooms. We welcome the downsizing exercise because it is in tandem with the reduced workload.

We are concerned about the high turnover of highly qualified and essential staff as the Tribunals near the end of their mandates. That can only exacerbate an already difficult situation. We commend the creation of the roster system, which ensures that qualified replacements are within reach.

My delegation welcomes the outreach and capacity-building programmes and other legacy matters that form part of the Tribunals' completion strategy. That ensures that there will not be a vacuum upon termination of the mandate. To that extent, the Tribunals are exemplary models of international criminal justice.

**Mr. Dabbashi** (Libyan Arab Jamahiriya) (*spoke in Arabic*): First of all, I would like to congratulate you, Mr. President, and your delegation on the assumption of the presidency of the Security Council for December. We are certain that your African wisdom and skills will enable you to direct the work of the Council successfully. I would also like to thank Ambassador Mayr-Harting and his delegation for wisely conducting the Council's work last month.

I wish to welcome the Presidents and the Prosecutors of the two courts, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and thank them for all the information that they provided in their briefings.

We welcome the noticeable progress made in the completion strategy work for the two Tribunals and the strong determination of the judges, prosecutors and all the staff of the Tribunals to complete their mandates successfully and as soon as possible. However, we are aware of the difficulties that the Tribunals encounter while carrying out their work, in particular when the swift arrest and extradition of the accused become impossible. While it is true that we welcome the cooperation of the Governments of Serbia, Croatia, the Democratic Republic of the Congo and Uganda on the arrest and the extradition of some senior accused, we hope that all countries will continue to fully cooperate in arresting the remaining fugitives as soon as possible, given the importance of the arrests to provide equity for the victims, to uphold justice, to achieve reconciliation and to provide security and stability in their respective countries and regions.

We firmly believe that enhancing the capacity of the judicial authorities in the countries concerned, in particular Rwanda, is especially important if we want those national judicial institutions to take on the trials that the two Tribunals will not be able to take up because they will have completed their work. It is vital to transfer as many pending cases as possible to national jurisdictions, in full conformity with the rules and procedures for fair trials. Transferring some cases to national jurisdictions would undoubtedly boost the rule of law in those countries, in particular access to documentation, which is even more important than the judicial procedures themselves in order to know the history and national reconciliation efforts in those countries.

We must ensure completion of the Tribunals' work with scrupulous respect for the deadlines called for by the two completion strategies, which means that we must make a decision on the legacy of the Tribunals. We are pleased to see the efforts made by the informal Working Group on international tribunals, chaired by Austria, seeking to reach an agreement on all pending issues with regard to the legacy of the Tribunals.

Thus, we would expect the Council to address the conclusions of the Working Group in the near future, and for it to establish an international mechanism that

would guarantee the effective and professional treatment of the legacy of the two Tribunals after the completion of their work.

**The President** (*spoke in French*): I would now like to make a statement in my national capacity as the representative of Burkina Faso.

As is right, I would like to thank the two Presidents and the two Prosecutors of the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for the Former Yugoslavia (ICTY) for their reports on their activities during these past six months and on the implementation of the completion strategy for each Tribunal, in accordance with resolutions 1503 (2003) and 1534 (2004).

I would also like to thank Ambassador Mayr-Harting of Austria for the information that he has provided us on the work of the informal Working Group on international tribunals.

We would like to congratulate the two Tribunals for their efforts to implement their completion strategies within an acceptable timeline, and we encourage them to maintain that pace.

Despite the efforts to make progress with pending cases, the situation of high-ranking fugitives, such as Ratko Mladić, Goran Hadžić or Félicien Kabuga, remains a source of concern. We urge the Offices of the two Prosecutors to continue to make the necessary efforts to arrest them. We call on all States, in particular those in the regions concerned, to cooperate with the Tribunals at the highest possible level to that end. We congratulate Uganda and the Democratic Republic of the Congo for their help in arresting two fugitives in neighbouring countries.

On the issue of the deadline for completing their work, we understand that factors beyond the Tribunals' control have caused delays in their daily work. We therefore note the necessity of the indicative deadline of 2013 for the finalization of judicial activities.

In the meantime, it is important that the initiatives to redeploy staff and reduce the size of the Tribunals continue. In the same vein, we are pleased to see that cases are successfully being transferred to national jurisdictions by the ICTY, and we urge the ICTR to continue to pay particular attention to the need to transfer the cases of second- and intermediate-rank accused to national jurisdictions, in particular that of Rwanda. That is clearly an essential element of the completion strategy of that Tribunal as approved by the Security Council.

Although we understand the reasons behind recourse to the dual employment of some judges who have decided to return to their national administrations, we encourage the Tribunals to limit such cases, which should be exceptional. We urge them to pursue their awareness-raising and capacity-building efforts and to further enhance their cooperation ties with national jurisdictions. Similarly, the protection of victims and witnesses should be an ongoing priority for the Tribunals, especially in light of the invaluable contribution of witnesses to the administration of justice.

With regard to the status of the ICTR ad litem judges, most of whom have worked on a permanent basis for five years or more, we believe that it would only be fair for the Security Council to consider the question of benefits for judges, to which they should be entitled in light of their conditions of service.

Burkina Faso has followed with interest the efforts of the Security Council Informal Working Group in addressing residual matters under the chairmanship of Austria, whom we congratulate for its leadership and for having prepared the draft resolution under discussion in the Working Group. We hope that the draft will enable us to reach a satisfactory solution to the significant concerns about the functions, character and structure of the residual mechanism, as well as the question of the archives of the Tribunals.

I now resume my functions as President of the Security Council.

I give the floor to the representative of Sweden.

**Mr. Lidén** (Sweden): I have the honour to speak on behalf of the European Union (EU). Turkey, Croatia, the former Yugoslav Republic of Macedonia, Iceland, Albania, Bosnia and Herzegovina, Montenegro, Ukraine, the Republic of Moldova, Armenia and Georgia align themselves with this statement.

At the outset I would like to thank the Presidents of both Tribunals, Judge Robinson of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Judge Byron of the International Criminal Tribunal for Rwanda (ICTR), and the Prosecutors, Mr. Brammertz and Mr. Jallow, for their briefings on

the implementation of the completion strategies of the Tribunals.

Preserving the legacy and integrity of the Tribunals is of the utmost importance to the European Union. The Tribunals have had a pioneering role in the fight against impunity and made outstanding contributions to international criminal law and international humanitarian law. It is a fact that the Tribunals will not be able to complete their work within the dates envisaged in resolutions 1503 (2003) and 1534 (2004). A number of challenges face both Tribunals in their work towards completing their mandates.

The European Union regrets that, despite the continuing appeals of the international community, 13 accused remain at large. The arrest of the remaining fugitives is necessary for the completion of the Tribunals' work. Among those still at large are key indictees allegedly responsible for the most serious atrocities, such as Ratko Mladić, Goran Hadžić and Félicien Kabuga. There have been many commendable instances of cooperation. However, the European Union continues to urge all States to cooperate immediately and unconditionally with both Tribunals, in full compliance with their obligations under the relevant Security Council resolutions.

As outlined in the current completion strategy reports, retaining qualified staff and judges remains a difficult task. We acknowledge the importance of enabling the Tribunals to complete the proceedings as soon as possible without compromising due process. However, we also reiterate the need for the Tribunals to ensure that they continue to seek efficiencies wherever possible and that they move to downsize as soon as possible, in line with the level of trial and other remaining activities.

We note with appreciation the ICTR's high output in judgements and newly commenced trials in 2009. The European takes note of the continuing commitment to the completion of the mandates of the Tribunals. The EU also urges the Tribunals to continue to identify further measures to complete their work in an efficient and expedient manner.

I will now turn to the work of the ICTY more specifically. The EU would like to recall that full cooperation with the ICTY is an essential element of the enlargement strategy of the European Union. This includes assisting in strengthening national jurisdictions through capacity-building, as called for in resolutions 1503 (2003) and 1534 (2003). Our commitment to strengthened cooperation and capacity-building is demonstrated by the number of EU members that have concluded agreements with the Tribunal on the relocation of witnesses, the enforcement of sentences, the secondment of prison staff, and the financial and institutional support of the EU to the Tribunal's capacity-building and outreach activities.

We note with appreciation the efforts made by Rwanda to meet the demands regarding the right to a fair trial. The ongoing strengthening of the Rwandan legal system and its ability to adjudicate cases from the ICTR will, we hope, permit the ICTR to transfer such defendants to the Rwandan courts. These efforts have been fully supported by the European Union as an important step towards the fulfilment of the Tribunal's completion strategy.

The primary responsibility for the prevention, investigation and prosecution of genocide, war crimes and crimes against humanity lies with States. Thus, the European Union continues to support the capacity-building activities of both Tribunals, which also contribute to the enhancement of the rule of law and regional stability.

The European Union welcomes the work on residual issues of the Security Council Informal Working Group on international tribunals, including identifying functions that need to continue after the two Tribunals have completed their work. We value the open and transparent discussions under the Austrian chairmanship, including by convening an Arria formula meeting open to all Member States in October.

The European Union stands ready to continue to work with the Council on finding the most appropriate solutions to the residual and legacy issues. This includes addressing questions of a practical nature, as well as finding solutions to ensure adequate access to the archives. The archives should foster reconciliation and memory and contribute to the preservation of the profound achievements of both Tribunals to secure a long-term legacy. Existing capabilities should also be built on and synergies between Tribunals should be created as part of an overall strengthening of international criminal justice.

**The President** (*spoke in French*): I now give the floor to the representative of Bosnia and Herzegovina.

**Mr. Barbalić** (Bosnia and Herzegovina): At the outset, allow me to congratulate the Austrian delegation for its remarkable presidency of the Security Council in November and also to convey to you, Mr. President, our best wishes for your presidency.

In addition to this statement, Bosnia and Herzegovina has aligned itself with the joint statement of the European Union.

Bosnia and Herzegovina expresses its profound gratitude to the Presidents of both Tribunals, Judge Robinson of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Judge Byron of the International Criminal Tribunal for Rwanda (ICTR), and the Prosecutors Mr. Brammertz and Mr. Jallow, for their tireless work and determination in seeking justice, and for their efforts in making their reports comprehensive and detailed. The work of both Tribunals has been crucial since they were established and remains such in combating impunity. We also note the importance of the Security Council Informal Working Group on international tribunals and commend the work of its Chair, Ambassador Mayr-Harding of Austria, as well as the efforts of the United Nations Office of the Legal Counsel.

We especially welcome the positive assessments, presented in the briefings of both the President and the Prosecutor of the ICTY, of the level of cooperation between Bosnia and Herzegovina and the ICTY, which confirms once again our strong determination and long-standing commitment to the Tribunal's values, goals and legacy. This high level of cooperation is also reflected in the number of accused being transferred to Bosnia and Herzegovina. Of the 13 accused who have been transferred to the national jurisdictions of countries of the former Yugoslavia, 10 have been transferred to Bosnia and Herzegovina alone. The proceedings against nine of them have been concluded, and the manner in which these cases were conducted by the War Crimes Chamber of the State Court of Bosnia and Herzegovina was in full compliance with the highest standards of international law. In that context, we also strongly support the efforts that the ICTY has made through its outreach programme and the continuous support and assistance provided to national jurisdictions in the region.

The authorities of Bosnia and Herzegovina have responded to the Tribunal's requests for assistance on documents and access to Government archives. The authorities are also continuing to assist in facilitating the appearance of witnesses before the Tribunal. In that context, we want to underline the importance of the role of the international community, which has been essential in assisting with witness protection programmes and, when necessary, in providing support for witness relocation.

My country recognizes the efforts of Prosecutor Brammertz to secure justice for victims and their families.

Bosnia and Herzegovina is fully aware of the conditions set out in resolutions 1503 (2003) and 1534 (2004) for the accomplishment of the completion strategy, but notes with concern that, with two fugitives remaining at large, the full completion of the Tribunal's work cannot be expected.

There is no doubt that the Tribunals have served as an inspiration to the international community by refusing to let perpetrators of the most heinous and grave crimes to escape justice. Therefore, the international community itself must stand firm when it comes to its decision that Ratko Mladić and Goran Hadžić must be tried before the ICTY. Under no circumstances can they count on impunity due to the fact that the mandate of the Tribunal is coming to an end. It is justice, and not deadlines, that the Tribunal needs to deliver.

The implementation of the completion strategy remains of great concern to us. We welcome the ongoing discussion on an adequate residual mechanism and understand the importance and complexity of the issue. The mechanism requires consideration and needs to be set up in such a manner as to deal adequately with the issue of prosecuting those subject to outstanding warrants and arrests and ensure that impunity is not an option.

**The President** (*spoke in French*): I thank the representative of Bosnia and Herzegovina for his kind words addressed to me.

I now give the floor to the representative of Serbia.

**Mr. Starčević** (Serbia): First of all, let me express the gratitude of Serbia to Judge Patrick Robinson and Mr. Serge Brammertz, respectively the President and Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, (ICTY), for all the

effort and professionalism they have invested in presenting their reports (see S/2009/589, annexes I and II).

My country is highly appreciative of the fact that, more than ever before, their reports are in essence in full accord with Serbia's own assessment of the level of cooperation that has been reached. Judge Robinson and Mr. Brammertz have recognized the entirely of the efforts that Serbia is making to comply with its legal and moral obligations. The efforts and commitments of the services engaged in tracking and apprehending the remaining fugitives have been recognized in a manner that confirms my country's political will and the capacity of its institutions to complete successfully the remaining tasks.

There are no impediments to Serbia's cooperation with the ICTY at this time. Requests for assistance with regard to the provision of documents, witness protection and access to State archives are being handled expeditiously. Most important, the efforts to locate and apprehend Ratko Mladić and Goran Hadžić are continuing unabated. The search for those individuals is being conducted on an everyday basis. The Government institutions of the Republic of Serbia are constantly taking all possible measures in order to bring the two remaining fugitives to justice.

That will go a long way towards alleviating the legacies of the past, some of which have hamstrung the recovery of Serbian society and other societies in the region for a long time. Also, the resolution of this one last remaining problem will confirm Serbia's willingness to face the truth about the events of the last decade of the twentieth century and the crimes perpetrated during the armed conflicts in the former Yugoslavia. It will also demonstrate its maturity and readiness to punish those responsible for the crimes that were committed, regardless of their nationality or the nationality of the victims.

Serbia continues to support the ICTY completion strategy in its entirety and has maintained its communication with responsible authorities on that issue in recent months. Serbia's position on the potential residual mechanism and the future residual functions was submitted to the Security Council in October 2008 and March 2009. I would like to reiterate Serbia's great and lasting interest in those issues, as well as to inform the Security Council that we remain at its disposal for possible future discussions on the matter in order to contribute to the resolution of those important questions.

In conclusion, allow me to reiterate once again Serbia's commitment to full cooperation with the ICTY. The reports presented to the Council today affirm that commitment and attest to the success of the joint efforts to bring that cooperation to a successful end.

**The President** (*spoke in French*): I now give the floor to the representative of Kenya.

**Mr. Muchemi** (Kenya): I wish to express my appreciation to you, Mr. President, and the other members of the Council for allowing me to participate in the proceedings of the Council today and to make my short statement.

Kenya appreciates the work of both the Presidents and the Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), as well as the manner in which they have conducted the affairs of their respective Tribunals. We strongly support the international criminal justice system. We recognize that the ad hoc criminal Tribunals established by the Council and the International Criminal Court must provide for, and protect, the proper administration of justice by prosecuting those who promote impunity. To that end, the cooperation of Member States is vital if the courts are to succeed in carrying out their mandates. Kenya is fully aware of its international obligations and continues to stand ready to offer its maximum cooperation in that connection.

As we have stated on previous occasions, Kenya supports the case put forward by the President of the ICTR on behalf of ad litem judges. We urge that there be an urgent resolution of that matter.

My delegation now wishes to comment on the work of the Office of the Prosecutor of the ICTR, and in particular on the issue of referrals. In paragraph 54 of the report on the activities of the ICTR (see S/2009/587, enclosure), it is implied that Kenya continues to provide safe haven for Félicien Kabuga. We note with disappointment that, despite Kenya's demonstrated support and cooperation with the Court since its inception, both the President and the Prosecutor, in their addresses this morning before the Council, have continued to insinuate that Kenya is

either hiding fugitive Kabuga or is otherwise refusing to fully discharge its obligation vis-à-vis his arrest. My delegation strongly refutes that allegation and reiterates that that fugitive is not in Kenya.

The Kenyan Government's efforts in cooperating with the ICTR are not in doubt. My country has worked closely with the Tribunal. In that regard, we have arrested and surrendered to the ICTR the largest number of indictees. Kenya has also played a major role in the relocation, protection and facilitation of movement of witnesses for the Tribunal.

Several steps have been taken in a bid to trace Mr. Kabuga, including the establishment of a joint Kenya-ICTR task force, obtaining a freeze order on property registered in the fugitive's name and offering cash rewards for anyone giving information that would lead to his arrest. The search for Mr. Kabuga should therefore be widened to other areas, because we might be over-concentrating on Kenya whereas the fugitive could be comfortably living elsewhere.

On 30 September 2009, as part of its continuing and unreserved commitment to the work of ICTR, Kenya concluded an extradition treaty with the Republic of Rwanda that provides, inter alia, for the extradition of Rwandans suspected of having committed genocide. This underscores Kenya's commitment to and seriousness in the apprehension of all perpetrators of the various crimes covered by the treaty and their extradition to Rwanda to face justice.

My Government calls upon any person, institution or other actors with information relating to the whereabouts of the fugitive, whether in Kenya or in any other country, to provide such information forthwith to the ICTR, INTERPOL or any other investigative agency in Kenya and elsewhere to facilitate the expeditious apprehension of this indictee so that he can face justice.

I wish to conclude my remarks by re-emphasizing that, in the Kabuga case, the Government of Kenya has fully discharged its international obligations and cooperated with the ICTR officials, as called for by the Security Council. We reiterate our commitment to the high ideals of international criminal justice and the eradication of impunity, and we will continue to implement the recommendations of the Joint Kenya-ICTR Task Force and the resolutions of the Security Council.

**The President** (*spoke in French*): I now call on the representative of Rwanda.

**Mr. Gasana** (Rwanda): I thank you, Mr. President, for the opportunity to participate in this debate, and allow me to congratulate you on assuming the presidency of the Council for the month of December. We also congratulate Austria on the successful conclusion of its presidency.

My delegation wishes to thank the President and Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) for their briefings. We particularly welcome their acknowledgement of the cooperation extended to the Tribunal by my Government.

In the period since the Tribunal's most recent briefing to the Council, my Government has consistently extended the cooperation and support necessary to enable the ICTR to effectively execute its mandate. We have continued to facilitate unfettered access to witnesses for both the defence and the prosecution and assisted the movement of witnesses to and from Arusha. I am pleased to report to the Council that, in my Government's efforts to ensure the peace and stability of our citizens, we have continued to ensure the security of witnesses and, with the support of the Office of the Prosecutor, established the Rwanda witness protection service. My Government has continued to support investigations initiated by both the prosecution and the defence without prejudice to either.

My Government remains committed to continuing its support to the ICTR completion strategy, as set out in resolution 1503 (2003). Despite the decisions of the Trial and Appeals Chambers of the ICTR to reject the Prosecutor's decision to transfer cases to Rwanda, we remain prepared to receive any future cases transferred to our competent jurisdiction by the ICTR and to address all of the issues raised in objection by the Chambers in respect to their decisions. We welcome the Prosecutor's recognition of the reforms undertaken by my Government in the justice sector and his intention to renew his requests for referrals to Rwanda.

The recent transfer by the Special Court for Sierra Leone of five convicts to serve their sentences in Rwanda is testament to the fact that this Court, after due diligence, was satisfied that the efforts my Government had undertaken and continues to undertake were sufficient to merit transfer.

We continue to maintain that the transfer to Rwanda is based primarily on the fact that the crimes falling under the Court's mandate were committed in Rwanda, mostly by Rwandans and against fellow Rwandans. The evidence and witnesses used by this Court are also from Rwanda. The end results of the justice administered by the Tribunal are supposed to be more visible in Rwanda than elsewhere, and we thank the President of the ICTR for his recognition of this in his statement this morning. We remain confident that this situation will be remedied.

The recent decisions taken by the Trial and Appeals Chambers continue to hamper my Government's ability to pursue and bring to justice those suspected of genocide all over the world. These decisions have in tone and content undermined the efforts my Government has pursued to reject a culture of impunity and setback the progress registered in repairing our shattered national fabric, not only in the justice sector but in all aspects of national reconciliation and reconstruction. The recent acquittals of Protais Zigiranyirazo and Hormisdas Nsengimana and the basis for those acquittals are, in the view of my Government, most regrettable.

My Government welcomes the arrests of Grégoire Ndahimana and Idelphonse Nizeyimana and commends the Governments of the Democratic Republic of the Congo and Uganda for their efforts in this regard. We equally welcome the efforts of the Governments of Canada, Belgium, Finland and Sweden to apprehend and bring to justice persons within their jurisdiction accused of genocide. We regret, however, that some countries have failed to extend the necessary cooperation to either my Government or the Court, and we would urge them to do so.

My Government has repeatedly stated its view that the archives of the ICTR should be transferred to Rwanda upon completion of its mandate. This conviction is premised on the fact that these records constitute an integral part of our history, are vital to the preservation of the memory of the genocide and will play a critical role in educating future generations to ensure the prevention of genocide. We recognize the ongoing process to determine the final destination of the ICTR archives and will remain engaged in the ongoing deliberations of the Security Council Informal Working Group on international tribunals.

At this crucial juncture, my Government shares the Security Council's desire to reach a reasonable and effective conclusion to the ad hoc mandate of the Tribunal. We therefore urge the Council to do all within its power to ensure that the ICTR completion strategy is reached without creating an impunity gap and undermining the efforts of my Government. In conclusion, allow me to reiterate my Government's continued commitment to supporting the work of the ICTR.

**The President** (*spoke in French*): I thank the Permanent Representative of Rwanda for his kind words addressed to me.

There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

Before adjourning the meeting, I would like to thank, on behalf of Council members, President Robinson, President Byron, Prosecutor Brammertz and Prosecutor Jallow for their presentations to the Council.

*The meeting rose at 1.30 p.m.*

United Nations S/PV.6229

# Security Council

Sixty-fourth year

*Provisional*

**6229**th meeting

Thursday, 3 December 2009, 5.10 p.m.

New York

| | | |
|---|---|---|
| *President*: | Mr. Kafando | (Burkina Faso) |
| *Members*: | Austria | Mr. Ebner |
| | China | Mr. La Yifan |
| | Costa Rica | Mr. Artiñano |
| | Croatia | Mr. Skračić |
| | France | Mr. De Rivière |
| | Japan | Mr. Okuda |
| | Libyan Arab Jamahiriya | Mr. Belkheir |
| | Mexico | Mr. Heller |
| | Russian Federation | Mr. Demekhin |
| | Turkey | Mr. Çorman |
| | Uganda | Mr. Rugunda |
| | United Kingdom of Great Britain and Northern Ireland | Mr. Parham |
| | United States of America | Ms. DiCarlo |
| | Viet Nam | Mr. Hoang Chi Trung |

## Agenda

The situation in Somalia

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-506.

09-63260 (E)

Please recycle

*The meeting was called to order at 5.10 p.m.*

**Adoption of the agenda**

*The agenda was adopted.*

**The situation in Somalia**

**The President** (*spoke in French*): I should like to inform the Council that I have received a letter from the representative of Somalia, in which he requests to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the consideration of the item without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

*At the invitation of the President, Mr. Duale (Somalia) took a seat at the Council table.*

**The President** (*spoke in French*): The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

After consultations among the members of the Security Council, I have been authorized to make the following statement on behalf of the Council:

"The Security Council condemns in the strongest terms the terrorist attack in Mogadishu on 3 December at a graduation ceremony for Somali medical students at Benadir University, which resulted in the death of innocent civilians and the Somali Ministers of Health, Higher Education and Education. This was a criminal attack on people dedicated to building a peaceful, stable and prosperous future for the people of Somalia.

"The Security Council expresses its deepest sympathy and condolences to the families of those killed and to those injured in the attack, as well as to the Transitional Federal Government and the people of Somalia.

"The Security Council urges that a thorough investigation be conducted and that the perpetrators of this attack be brought swiftly to justice.

"The Security Council underlines its determination to continue to support the people of Somalia in their quest for peace and reconciliation, and the Transitional Federal Government as the legitimate authority in Somalia, and reiterates its full support for the Djibouti Peace Process, which provides a framework for reaching a lasting political solution in Somalia.

"The Security Council reaffirms its demand that all opposition groups immediately end attacks, put down their arms, renounce violence and join reconciliation efforts. The Council further calls on all parties to abide by their obligations under international humanitarian law, in particular to respect the security of civilians, humanitarian workers and the personnel of the African Union Mission in Somalia (AMISOM).

"The Security Council welcomes the work of AMISOM in supporting the casualties of the attack and their relatives. It reiterates its strong support for AMISOM and expresses its continued appreciation for the commitment of troops by the governments of Uganda and Burundi.

"The Security Council reaffirms that Somalia's long-term security rests with the effective development by the Transitional Federal Government of the National Security Force and the Somali Police Force, in the framework of the Djibouti Agreement and in line with a national security strategy. The Council urges the international community to support the Somali security institutions, in coordination with AMISOM, including through training and equipment."

This statement will be issued as a document of the Security Council under the symbol S/PRST/2009/31.

The Security Council has thus concluded the present stage of its consideration of the item on the agenda.

*The meeting rose at 5.15 p.m.*

United Nations S/PV.6230

# Security Council

Sixty-fourth year

*Provisional*

**6230**th meeting

Friday, 4 December 2009, 10 a.m.

New York

| | | |
|---|---|---|
| *President*: | Mr. Kafando/Mr. Tiendrébéogo | (Burkina Faso) |
| *Members*: | Austria | Mr. Mayr-Harting |
| | China | Mr. Liu Zhenmin |
| | Costa Rica | Mr. Urbina |
| | Croatia | Mr. Vilović |
| | France | Mr. Araud |
| | Japan | Mr. Takasu |
| | Libyan Arab Jamahiriya | Mr. Dabbashi |
| | Mexico | Mr. Heller |
| | Russian Federation | Mr. Churkin |
| | Turkey | Mr. Apakan |
| | Uganda | Mr. Rugunda |
| | United Kingdom of Great Britain and Northern Ireland | Sir Mark Lyall Grant |
| | United States of America | Ms. DiCarlo |
| | Viet Nam | Mr. Le Luong Minh |

## Agenda

Reports of the Secretary-General on the Sudan

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-506.

09-63331 (E)

Please recycle

*The meeting was called to order at 10.15 a.m.*

**Adoption of the agenda**

*The agenda was adopted.*

**Reports of the Secretary-General on the Sudan**

**The President** (*spoke in French*): In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court.

It is so decided.

I invite Mr. Moreno-Ocampo to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Security Council is meeting in accordance with the understanding reached in its prior consultations.

At this meeting, the Security Council will hear a briefing by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court. I now give him the floor.

**Mr. Moreno-Ocampo**: Mr. President, I thank you for this opportunity to brief the Council on the judicial activities of the Office of the Prosecutor of the International Criminal Court (ICC) on Darfur.

Since my last briefing in June 2009 (see S/PV.6135), there have been positive developments. First, judicial proceedings in relation to the Darfur situation are progressing; secondly, cooperation with the African Union, the League of Arab States and other international bodies has been fruitful; and, thirdly, States and international organizations have maintained consistent support for the execution of the Court's arrests warrants. I shall begin by referring to these three aspects.

First, I shall address the International Criminal Court's judicial proceedings. On 19 November, rebel leader Bahr Abu Garda, President of the United Resistance Front, was the first person to appear in Court in relation to Darfur crimes. My Office alleges that he is responsible for killing and injuring peacekeepers from Botswana, Senegal, Mali, Nigeria and the Gambia during the attack against the Haskanita bases. Abu Garda appeared voluntarily before the Court and presented his defence, arguing that he was not part of the attack. However, we presented 552 incriminatory items of evidence and called three witnesses to testify during the confirmation of charges. Two of them were peacekeepers from Nigeria and the Gambia who survived the attacks, and the other was a senior Kenyan military expert.

For my Office, attacking peacekeepers is a serious crime. It affects millions of civilians in need of aid and security. Both this Council and the African Union have emphasized the seriousness of the Haskanita attack and the need to bring the perpetrators to justice. We are grateful to a number of States — including Senegal, Mali, Botswana, Nigeria, the Gambia, Chad and the Netherlands — that contributed to the investigation and surrender of the rebel leader.

On 20 November in The Hague, the representative of Nigeria, which is an incoming member of this Council, stated:

> "The Court's function of ensuring accountability for grave crimes is vital for the maintenance of lasting international peace ... Cooperation is critical in enhancing the effectiveness of the ICC ... Nigeria is presently assisting the Court in the prosecution of those involved in [...] the Haskanita killings of peacekeepers in Darfur."

We are grateful for that support.

The decision of the judges on the confirmation of charges is expected within two months. In this and the other cases, my Office is continuously taking measures to protect our witnesses. As the Council is aware, individuals falsely suspected of providing evidence to the International Criminal Court have been arrested and tortured in Khartoum. There have been public threats from the Sudanese authorities against anybody who cooperates with the Court's investigation of the crimes in Darfur. We are pleased, however, that no witness has been harmed.

There have also been positive developments in our cooperation with institutions that can complement the intervention of the International Criminal Court and promote additional proceedings for other perpetrators as well as truth and reconciliation mechanisms. This is the comprehensive approach defined by the Council in resolution 1593 (2005), which encourages the Court to support international cooperation with domestic efforts to promote the rule of law, protect human rights and

combat impunity in Darfur, and which emphasizes the need to promote healing and reconciliation in order to complement judicial processes. This is the approach adopted by the Security Council and which the prosecution is following.

The League of Arab States, which reported on the commission of massive crimes in Darfur as early as 2004, is active in efforts to promote justice in Darfur. At the initiative of Secretary-General Amr Moussa, international crimes have been included in the Sudanese penal code.

President Mbeki, as head of the African Union High-level Panel, contacted me upon taking office and requested information on our activities and on crimes committed in Darfur. My Office submitted written observations to the Mbeki panel. We noted that the Government of the Sudan had created multiple judicial instruments and courts, but never allowed these courts to fulfil their mandates. The Mbeki panel shared this analysis in its own report (S/2009/599, annex I), stating that:

> "As a result of the failings of the State in dealing with the grave situation in Darfur, faith in the criminal justice system has been severely eroded. To restore confidence and prevent impunity, a root and branch change will be required."

On 7 July, I was received by the full panel at African Union headquarters in Addis Ababa. We held a half-day dialogue. It was then clarified that the cases against President Al-Bashir, Ahmed Haroun and Ali Kushayb, as well as Abu Garda and two other rebel commanders, will be decided by the judges of the International Criminal Court. Additionally, we had exchanges on the complementary role that other courts can play to investigate other perpetrators.

The Panel's report respects the independent judicial work of the International Criminal Court and recognizes the need to do more, not less, justice efforts for Darfur and to try more, not less, cases. As the Panel rightly notes:

> "The emphasis on the International Criminal Court should not distract from the reality that, even at full capacity, the Court can only deal with a handful of individuals, thus leaving the burden of justice to the national system."

The Panel thus adopted a comprehensive solution, combining the current International Criminal Court cases with the possibility of having other courts try other perpetrators, if and when the conditions for such courts to operate effectively are created.

This last point is key and I wish to highlight it. As the Panel notes:

> "To date ... the perpetrators of the serious crimes in Darfur have overwhelmingly remained unpunished and the need for healing and reconciliation has remained largely unmet. This situation must be rectified urgently."

The Panel proceeds to list a series of prerequisites to be met before this situation can be rectified, stressing that no genuine proceedings can take place before the Sudan, first, removes official immunities; secondly, adopts special measures for dealing with rape and sexual crimes; and thirdly, ensures the protection of witnesses. Thus, it is not just a matter of setting up new courts. It is a matter of creating a framework allowing these courts to operate effectively and independently.

As Council members know, on 29 October a high-level meeting in Abuja of the African Union Peace and Security Council endorsed the report and recommendations. It established an implementation panel comprising former Presidents Thabo Mbeki, Pierre Buyoya and Abdulsalami Abubakar. The Office of the Prosecutor is ready to assist the new panel in its endeavours.

In past meetings, Council members have also stressed the need to pursue an integrated approach in Darfur integrating justice, security, political negotiations and humanitarian aid. I am glad to report to this Council that all the actors working on those different aspects are respecting the judicial independence of the Court — in particular, as I mentioned, the Mbeki panel but also the Prime Minister of Qatar as chair of the Arab-African ministerial committee, Joint African Union-United Nations Chief Mediator for Darfur Djibrill Bassolé, and the Arab League Secretary-General. It is remarkable, because they demonstrate that engagement with the Government of the Sudan in political negotiations is possible while recognizing President Al-Bashir's individual criminal responsibility for the crimes committed and respecting the Court's decisions. Engagement while respecting legal limits is the solution that they are pushing.

There are also positive developments to report regarding the cooperation of States, including in the

execution of arrest warrants. The International Criminal Court (ICC) is receiving decisive public support. Efforts to get the arrests executed are going forward. The warrants for arrest have been transmitted to Sudan. In its resolution 1593 (2005) and its presidential statement of 16 June 2008 (S/PRST/2008/21), the Security Council insisted on the duty of the Sudan to cooperate fully with the Court. Ending crimes and arresting individuals on Sudanese territory is a primary responsibility of the Sudanese Government. It has both the legal duty and the ability to do so. All efforts during this month have converged to encourage the Sudan to respect its responsibilities as a United Nations Member State, to put an end to crimes and to arrest the persons sought by the Court.

During the General Assembly debate in October, 56 States emphasized the importance of cooperation with the Court, including in relation to the arrests. On 29 October, Kenya, on behalf of the African States parties, reaffirmed their commitment to their legal obligations with no reservations. African States parties to the Rome Statute have affirmed both their position as African Union members that the Security Council should consider deferring the Darfur investigation and, at the same time, their legal duty under the Statute to execute arrest warrants should indictees be present on their territory.

Over the past six months, Deputy Prosecutor Fatou Bensouda and I met with many African Presidents, including President Zuma of South Africa, President Museveni of Uganda, President Jammeh of the Gambia, President Kibaki of Kenya and President Deby Itno of Chad. All of them expressed their commitment to justice and to ending impunity. I would also like to note that, during the General Assembly debate in October, Mexico referred to the refusal of the Sudan to cooperate with the Court as "clear non-compliance with a legally binding obligation"; Peru and Bolivia indicated that, upon receipt of the warrant, they had activated national procedures to ensure the arrest of President Al-Bashir, should he set foot in their countries. On 15 September, the European Union's External Relations Council adopted conclusions calling upon the Sudan to cooperate fully with the Court in accordance with its obligations under international law.

As a consequence, President Al-Bashir, at risk of being arrested, has not travelled to the territory of States parties for high-level events that he had planned to attend in South Africa, Uganda, Nigeria and Venezuela. He cannot attend the Climate Conference in Copenhagen. He has not attended the United Nations General Assembly, nor a recent meeting of the Organization of the Islamic Conference's Committee for Economic and Commercial Cooperation. This is the way to ensure the arrest of President Al-Bashir. This process of marginalization of indicted criminals, if maintained steadfastly, is a way to ensure the ultimate implementation of the arrest warrants issued by the Court. Respect for the Court's decision to issue a warrant for President Al-Bashir's arrest sends a clear message: President Al-Bashir will face justice. Any leader committing this type of crime will face justice. Power does not provide immunity. There was no immunity for President Milošević; there was no immunity for Prime Minister Kambanda; there was no immunity for President Taylor. There will be no immunity for President Al-Bashir.

There are also negative developments in two areas: the lack of cooperation of the Sudan, and the continuation of crimes. Sudan has refused to cooperate with the Court. In resolution 1593 (2005), the Council decided that the "Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor" (*para. 2*).

As I said, the warrants were transmitted to the Sudanese Government. However, President Al-Bashir has refused to appear in court. He has refused to appoint a lawyer to represent his position. He has refused to arrest Ali Kushayb and Ahmad Harun. Ahmad Harun is now the Governor of South Kordofan. This all represents non-compliance with the Security Council's decisions. Instead, over the past six months, President Al-Bashir has continued to use the Sudanese State apparatus to conduct a diplomatic, political and communications campaign against the Court; he has endeavoured to shift the attention of the international community to other pressing issues, such as the conflict with the South. President Al-Bashir is willing to exacerbate such conflict, if it can divert your attention from the crimes committed in Darfur and his responsibility for them.

As the Prosecutor, I will deal with any judicial challenge brought by President Al-Bashir and other suspects in court. But I will need the full support of the Council to ensure that the focus remains on the need to arrest President Al-Bashir and the other individuals

sought by the Court, and on the need to end the crimes in Darfur. The crimes are continuing. During the past six months there have been indiscriminate bombings of civilians resulting in casualties and forced displacement; ongoing tactics aimed at exterminating displaced persons in the camps, including hindering humanitarian aid and expelling assistance providers with the obvious consequence of reducing access in camps to food, water and other services; ongoing rapes and sexual violence resulting in mental and bodily harm; and continuing use of child soldiers, though by various parties. As recently as last week, on 25 November, there were reports of Janjaweed militia attacks against Al-Harra and Jabel Issa, two villages in North Darfur, in which civilians were captured, villagers beaten and property looted.

I would like to inform the Council that, with a view to increasing predictability, my Office is reviewing information in four main areas. The first is acts affecting displaced persons, committed in particular by the Humanitarian Aid Commission (HAC). On 10 November 2009, HAC Commissioner Hassabo announced that the Sudanese Government would close the camps for displaced persons by early next year, without guarantees of access to food and water, and without guarantees of security. Sheikhs in camps who oppose returns to unsafe areas are targeted. They are imprisoned and tortured. Let me clarify that any forced return of displaced persons in these conditions can constitute a new crime within our jurisdiction.

The second area is acts against civilians in the camps, including rape, by the forces of President Al-Bashir.

Thirdly, we are monitoring the use of child soldiers. The recent report by Ms. Coomaraswamy indicates that both the Sudanese Armed Forces and the rebel groups recruit children. That is a crime under our jurisdiction.

Fourthly, as our investigation into the case of President Al-Bashir demonstrated that he used the State apparatus not only to commit massive crimes but also to conceal them, and thus to facilitate their continuation, my Office is considering the criminal responsibility of Sudanese officials who actively deny and conceal crimes. They do not benefit from any immunity under the Rome Statute. Since Nuremberg, due obedience is no longer a legal excuse for the commission of crimes.

A few months ago, on 4 March 2009, the judges of the International Criminal Court ruled that the policy adopted by President Al-Bashir against 2.5 million Sudanese citizens in the camps constituted extermination, as a crime against humanity. The Appeals Chamber is considering whether the charge of genocide should be added.

President Al-Bashir, instead of stopping the crimes, is stopping information about the crimes. The decision to expel humanitarian workers and silence others by threats of expulsion, or the attempts at restricting the freedom of movement of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) are part of this policy to reduce the monitoring capacity of the international community.

In his 16 November report (S/2009/592), the Secretary-General accused the Government of the Sudan of breaching UNAMID's Status of Forces Agreement by placing impediments on the movement of peacekeepers. UNAMID, which is the last international presence able to keep a protective eye on camps and rural areas and to report on rapes and sexual violence, is now blocked.

As I have mentioned, my mandate as Prosecutor is to investigate and prosecute those responsible for such crimes, in order to contribute to the prevention of future crimes. I am ready to answer any challenge — about the evidence or about legal aspects — in court, but I will need the full support of the Council to contribute to ending the current crimes against victims in Darfur.

**The President** (*spoke in French*): I thank Mr. Moreno-Ocampo for his briefing.

I shall now give the floor to members of the Council wishing to make statements.

**Sir Mark Lyall Grant** (United Kingdom): I should like to welcome the Prosecutor of the International Criminal Court (ICC) back to the Security Council and to thank him for his report and his comprehensive briefing on his investigation into the situation in Darfur. I should also like to take this opportunity to thank the Prosecutor and his team for their efforts to bring justice to the victims of the serious crimes that have been committed in Darfur.

My Government is encouraged by progress over the past six months, which the Prosecutor has reported, in relation to one of the cases which he has opened in

respect of Darfur. We welcome the voluntary appearance at the ICC of Bahr Idriss Abu Garda to answer charges of war crimes in relation to the June 2008 attack on African Union and United Nations peacekeepers at Haskanita. It is encouraging that some parties to the conflict in Darfur are now showing willingness to cooperate with the ICC, and we call on all the others to do likewise.

My Government remains deeply concerned, however, by the continued lack of cooperation with the ICC by the Government of Sudan. Once again, the Prosecutor appears before us to report no movement on this issue, in particular over the outstanding arrest warrants. There are no relevant proceedings under way in Sudan in relation to the indictees. Nor has the Government of Sudan given any indication of an intention to investigate or prosecute these cases. I should like to underline that, as the Prosecutor stated, Sudan is under a legal obligation to cooperate with the ICC by virtue of resolution 1593 (2005), and we reiterate once again our call on Sudan and all other parties to the conflict to provide full cooperation to the Court.

My Government is also very concerned to hear the Prosecutor's analysis that very serious crimes continue to be committed in Darfur, in particular attacks on civilians, including humanitarian workers, sexual violence, forced returns and the use of child soldiers.

The United Kingdom welcomes the steps the Prosecutor is taking to monitor these unacceptable attacks on the civil population of Darfur. We also welcome the Prosecutor's continued contacts with other relevant international and regional actors, in particular his engagement with the African Union High-level Panel on Darfur and its preparation and implementation of the recommendations in the Mbeki report (S/2009/599, annex I) on combating impunity and promoting peace and reconciliation in Darfur. We consider the Mbeki Panel report, which we shall be discussing later this month, to be thorough, detailed and balanced, with much that offers scope for progress on peace, justice and reconciliation.

In conclusion, I would like to underline that the United Kingdom remains a strong supporter of the International Criminal Court and of its work to combat impunity in Darfur. We commend Prosecutor Moreno-Ocampo's continuing efforts to achieve this.

**Ms. DiCarlo** (United States of America): I too would like to welcome Prosecutor Moreno-Ocampo back to the Security Council today and to thank him for his briefing. We are very pleased to hear about the progress that is being made — that is, that one case is proceeding and that some States and organizations are providing excellent cooperation.

But the Prosecutor's briefing and report make clear that the Government of Sudan has not fulfilled its obligation to cooperate with the International Criminal Court (ICC) under resolution 1593 (2005), a binding Chapter VII resolution whose importance was reiterated by the Council in our 16 June 2008 presidential statement (S/PRST/2008/21).

The United Sates believes that those responsible for the atrocities in Darfur must be held accountable. Actions in Darfur affect the stability of Sudan as a whole. Despite the creation of a special court for Darfur and numerous committees established in 2005 to pursue justice for Darfuri victims, the ICC arrest warrants are still outstanding.

We continue to call on the Government of Sudan to cooperate fully with the ICC, as required by resolution 1593 (2005). Continued violence in Darfur is undermining an already fragile humanitarian situation. During the past six months, the conflict continued to claim the lives of more civilians. The United Nations Panel of Experts on the Sudan confirmed that the Government of Sudan violated the ban on military flights over Darfur.

Both the Prosecutor's report and the Secretary-General's report (S/2009/592), describe Sudanese armed forces and militia ground offences supported by air bombardments in the Jebel Marra region and in North Darfur. Those reports note that the Government operations around Korma, Ain Siro and Melitt all resulted in civilian casualties, the displacement of more civilians and the destruction of public infrastructure. The Government's recent actions are the very type of actions that led the Council to refer the conflict in Darfur to the ICC in the first place.

On top of this continuing violence, the Government of Sudan has contributed to the deterioration of the humanitarian situation in Darfur. We were able to temporarily narrow serious gaps in life-saving sectors when the Government of Sudan expelled humanitarian non-governmental organizations (NGOs) on 5 March.

But those efforts cannot necessarily be sustained over the long term. The African Union-United Nations Hybrid Operation in Darfur (UNAMID) reports that the international NGO presence in Darfur has been cut in half. That has dramatically reduced those groups' ability to provide assistance to those in need. The Council must be vigilant in holding the Government of Sudan responsible for fully meeting the humanitarian needs of its population.

Those responsible for these atrocities must be held accountable. We urge all States, including those not party to the Rome Statute, to refrain from providing political or financial support to Sudanese suspects indicted by the ICC.

Although the United States is not party to the Rome Statute, it was pleased to participate last week for the first time as an observer in the Assembly of States Parties to the Rome Statute. That decision reflected the United States commitment to engage with the international community on issues that affect our foreign policy interests. Ending impunity for crimes against humanity, including crimes on the staggering scale of those committed in Darfur, ranks high among our commitments. The United States will therefore continue to be supportive of the ICC's prosecution of these cases to the extent consistent with United States domestic law.

Let me say a word on the African Union High-level Panel on Darfur, chaired by former South African President Thabo Mbeki. On 29 October, the Panel made several recommendations to combat impunity and advance the cause of accountability, peace, healing and reconciliation. We welcome efforts to strengthen Sudan's national legal system to let it deal appropriately with those who committed atrocities in Darfur. But efforts to strengthen Sudan's legal system will not succeed unless they are backed by the political will to bring perpetuators to justice. The recommendations of the Mbeki report (S/2009/599, annex I) about a hybrid tribunal are worth further study, but we believe that the ICC's prosecution of the key architects of the conflict in Darfur remains critical.

In conclusion, let me reiterate my Government's unequivocal support for the pursuit of justice and accountability for those who have committed atrocities in Darfur. We once again call upon the Government of Sudan to fully implement resolution 1593 (2005).

**Mr. Heller** (Mexico) (*spoke in Spanish*): Mexico thanks the Prosecutor of the International Criminal Court (ICC), Luis Moreno-Ocampo, for presenting the tenth report of the ICC to the Security Council on the situation in Darfur, pursuant to Security Council resolution 1593 (2005).

Almost five years have passed since that resolution was adopted, and the situation in Darfur continues to be grave, because of the enormous challenges that continue to be posed by violations of human rights and international humanitarian law. And, with every passing day, impunity for those violations continues to prevail.

The conflict in Darfur constantly reveals murder, violations, forced displacement and child recruitment for participation in the hostilities, among other crimes that result from attacks against civilian populations. Those populations not only face a climate of violence but also suffer from restrictions on access to humanitarian relief and are under constant threat.

Among the three cases that the Prosecutor's Office has filed relating to the situation in Darfur, the only positive element that we can take from the tenth report is the voluntary appearance before the Court in May and October 2009 of the rebel leader Bahr Idriss Abu Garda, suspected of war crimes in the attack against the African Union base in Haskanita.

As for the other two cases, once again, we see that cooperation by the Government of the Sudan with the International Criminal Court is non-existent, especially on the execution of outstanding arrest warrants. Nor have national procedures been established in the Sudan to investigate and try the perpetrators of crimes documented by the Prosecutor's Office.

The Government of the Sudan is obliged to investigate and prosecute the perpetrators of international crimes committed within its jurisdiction. That is a basic principle of international criminal law and a premise of the system created by the Rome Statute. Events since the adoption of resolution 1593 (2005) show that, faced with the Government's inaction, the International Criminal Court should exercise its jurisdiction; all the other parties to the Darfur conflict should cooperate with it. Therefore, we need to recall that the total lack of cooperation of the Government of Sudan is a challenge not only to the

work of the Court, but also to the authority of the Security Council.

The Prosecutor's report provides us with a wide-ranging perspective on the nature of the conflict, the pattern of violations of human rights and international humanitarian law and the role being played by relevant international actors. Here, we acknowledge that one very important aspect is the interaction between the Prosecutor's Office and the independent African Union High-level Panel on Darfur. Several times in the Council, Mexico has stressed the importance of the role of regional actors in seeking a comprehensive solution to the situation in Darfur and has pointed out that Africa should be the main architect of a solution to the crisis.

The African Union Panel has identified deep-rooted challenges to justice such as the lack of trust in local institutions and the impunity that obviously prevails in this part of the Sudan because of weak institutional structures incapable of delivering justice, assigning responsibility or guaranteeing basic rights and providing redress to victims. We call for the Panel's course of action to be pursued and that the aims of promoting peace and reconciliation and combating impunity in Sudan be achieved. The Panel's recommendations, especially those related to justice and impunity, have been well received by the international community, in particular by the Peace and Security Council of the African Union and the ICC Prosecutor's Office. We hope for the same when, in a few days, the Security Council considers the report (S/2009/599, annex I). Even within the Sudan, they have been well received by some sectors that see them as a useful vehicle for combating impunity. We hope that the Government of the Sudan will use these reactions to build agreements favourable to achieving the aforementioned objectives.

In this context full and comprehensive compliance with the recommendations is critical in the short and medium term. In such a multifaceted conflict as that in Darfur, there is a risk that by only encouraging one of objectives we achieve neither peace nor justice. For that reason, we would like to stress the importance of dialogue and cooperation between the African Union's Panel of Experts and the Office of the Prosecutor of the International Criminal Court. We hope that through joint work the recommendations will be implemented and produce results very shortly. It is therefore fundamental that the Government of the Sudan genuinely cooperate with the international community and satisfactorily comply with its international obligations.

The international community and the Security Council cannot remain passive in the face of situations such as that in Darfur, which to date has led to 300,000 deaths and at least 2.5 million displaced people. Mexico therefore reiterates its call to the Security Council to demand that the Government of the Sudan fully comply with resolution 1593 (2005), that it cooperate without delay with the International Criminal Court, that it undertake concrete actions to put an end to the escalation of violence and impunity in Darfur, and that it adopt the necessary decisions to guarantee the full protection of the civilian population.

**Mr. Araud** (France) (*spoke in French*): I thank Mr. Moreno-Ocampo for his biannual report in implementation of resolution 1593 (2005). Like previous reports, this report confirms the lack of cooperation on the part of the Government of the Sudan with the International Criminal Court (ICC): arrest warrants have not been executed, the Court's jurisdiction is not acknowledged, the authority of the Security Council and its resolution 1593 (2005) are being questioned, and no national judicial procedure has been undertaken.

In 2005, when we adopted resolution 1593 (2005), despite differences among us regarding the Court, the Council showed its will to not tolerate that the terrible crimes committed in Darfur go unpunished. The resolution was triggered by the recommendations of the Commission of Inquiry, which we had requested to investigate the situation in Darfur and which had confirmed the commission of mass violations of human rights and international humanitarian law and the existence of crimes against humanity and war crimes.

France supported the adoption of the resolution, because it considered that transferring the case to the ICC was the best way to ensure that the perpetrators of the crimes would be judged impartially and in an efficient manner, and to send a strong message, beyond Darfur even, about the Security Council's determination to combat impunity for the most serious crimes against the human conscience.

In the days prior to the adoption of resolution 1593 (2005), the Security Council had successively adopted resolution 1590 (2005) in order to help the African Union with its surveillance and protection mechanism and resolution 1591 (2005) in order to bring the conflict to an end. Resolution 1593 (2005)

was aimed at ending impunity and was therefore part of a wider-ranging and coherent policy aimed at re-establishing peace and security in Darfur. The action of the Court and the Security Council have been complementary, therefore, although independent. France is convinced that there is no contradiction between justice and peace, and that combating impunity is one of the conditions of lasting peace.

It is true that political timing and judicial timing do not always coincide. The needs presented by a peace process can at times differ from the requirements of judicial process. That explains the presence in the Rome Statute of a mechanism that allows the Security Council to suspend investigations or proceedings undertaken by the ICC for a year. This mechanism, whose effects are temporary by definition, can only be used when the interests of peace and security absolutely requires such use. Its purpose can never be to permit impunity for crimes before the Court. It is clear that requirements for invoking this mechanism have not been met in the case of Darfur.

Whatever the case, it is not up to the Security Council to intervene in the independent judicial decision-making by the ICC and its Prosecutor. However, it should demand that everyone respect a resolution adopted under Chapter VII of the Charter that imposes on the Government of the Sudan and all other parties to the Darfur conflict full cooperation with the ICC and its Prosecutor and to provide all necessary assistance, and which firmly demands that all States and regional and international organizations concerned cooperate fully.

I note the positive indications provided by Prosecutor Moreno-Ocampo on cooperation with the Arab League, the African Union and the Government of Qatar. I also note the recognition that he has expressed here for the assistance provided by some countries in the investigation on the attack against Haskanita, which led to a first hearing in October.

I would like to reiterate that France believes firmly both in the authority of the Security Council, as the main United Nations body for maintaining peace and security, and in that of the International Criminal Court, as the judicial body responsible for punishing the most serious crimes in violation of international humanitarian law and human rights, to which the Council has entrusted the mission of prosecuting the atrocities committed in Darfur.

Everything should be done to bring about an urgent settlement to the conflict in Darfur and facilitate mediation efforts. Fighting impunity is a prerequisite that will contribute to restoring lasting peace and stability in the region.

**Mr. Churkin** (Russian Federation) (*spoke in Russian*): First of all, let me express our appreciation to the Prosecutor of the International Criminal Court (ICC), Mr. Moreno-Ocampo, for his tenth report on measures taken to investigate the situation in Darfur under Security Council resolution 1593 (2005) and for today's briefing. We note that, judging by the report, the Office of the Prosecutor in its work on Darfur is paying more and more attention to factors related to achieving a comprehensive peace in Darfur and in the Sudan overall, and also to national and regional efforts to combat impunity. In spite of a few differences in the assessments in today's briefing, we believe that this trend will continue to strengthen.

We welcome the report of the African Union (AU) High Level Panel on Darfur, chaired by former South African President Mbeki, containing a number of interesting ideas on the use of national mechanisms to bring about accountability. We look forward to a continuation of contacts between the Prosecutor of the ICC and the High Level Panel for the purposes of achieving peace, justice and reconciliation in Darfur, as well as for dealing with the challenges of criminal justice.

We take note of the Prosecutor's assessment of the state of cooperation between Khartoum and the ICC. However, we would call on him to carefully weigh his steps in his work on Darfur and to calibrate them with the challenges of achieving peace and improving the humanitarian situation.

We have noted on a number of previous occasions the need for an objective assessment of the actions of all parties to the conflict. We are pleased that a number of measures are being taken to investigate the attack on AU peacekeepers in Haskanita in September 2007. An important event in that area was the voluntary appearance of the rebel leader, Abu Garda, in The Hague and the start of the trial of his case. We call on the Prosecutor not to slacken in his attention to the work in that regard.

The Russian Federation registers its deep regret and concern regarding information on the ongoing violence in Darfur. It is clear that A comprehensive political settlement, with the active assistance of the

African Union-United Nations Hybrid Operation in Darfur, is the only way to end it. We support the efforts of the Joint African Union-United Nations Chief Mediator on the political process in Darfur, Mr. Bassolé, to bring a broad spectrum of Darfur rebel groups, as well as civil society leaders, into the negotiating process.

A critical challenge is for the parties to reach agreement on the cessation of armed hostilities. We are seriously concerned by the obstinate refusal of the leaders of such groups as the Justice and Equality Movement and the Sudan Liberation Movement to participate in the talks. We consider such conduct on the part of the rebels to be a major obstacle to a settlement.

We believe that the Darfur problem should be the subject of constructive dialogue and cooperation among the United Nations, the African Union and other mediators, on the one hand, and the Sudanese Government on the other. Russia has consistently helped to establish dialogue in such formats. We believe that progress in all areas of the settlement process will be made only on the basis of constructive and equal dialogue between the international community and the Government of the Sudan, with respect for the sovereignty of that country.

**Mr. Takasu** (Japan): Allow me to congratulate you, Mr. President, on your assumption of the presidency for the month of December. We are grateful to Ambassador Mayr-Harting and his team for their excellent presidency in November.

At the outset, I would like to thank Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his detailed report on recent activities and for his good presentation this morning. As an active member of the Court, Japan highly values the Prosecutor's efforts to implement resolution 1593 (2005), which Japan was honoured to vote in favour of at the time of its adoption.

It is a fundamental principle that impunity must not be condoned in respect of any crime, and particularly the most serious crimes of international concern, such as war crimes and crimes against humanity. That principle must be applied. The pursuit of justice is closely interlinked with durable peace, and both must be pursued in parallel.

Japan respects the independence and decisions of the ICC on the Darfur cases emanating from resolution 1593 (2005). Japan believes that the international community should be united in continuing to resolutely seek a solution that reconciles peace and justice. In that regard, we are closely following the development of the political and humanitarian situation in order to bring justice and peace to Darfur.

With regard to the three cases at the prosecutorial stage, the first set of arrest warrants, which were issued more than two years ago, and the second issue of an arrest warrant in March are still outstanding. In the third case, the voluntary appearance of Mr. Abu Garda for the confirmation of charges hearing in October is among the notable developments of the past six months. However, those developments are neither substantial nor expeditious enough. We urge the Government of the Sudan and all other parties to the conflict in Darfur to take the necessary actions expeditiously with regard to those cases and to address the issues of justice and peace in a manner consistent with resolution 1593 (2005) and the presidential statement of 16 June 2008 (S/PRST/2008/21).

Resolution 1593 (2005) emphasizes the promotion of the rule of law, the protection of human rights and the fight against impunity, as well as the need to promote healing and reconciliation. In that respect, the African Union High-Level Panel on Darfur carried out a comprehensive analysis of the issues of peace, justice, accountability, impunity and reconciliation in Darfur. We acknowledge the cooperation of the African Union and the tireless efforts of former President Mbeki as Chairman of the Panel. We hope that such efforts serve to facilitate the ongoing peace process in Doha.

With regard to the specific recommendations of the report, in-depth consideration and review will be necessary. We look forward to the constructive discussion of the report with the members of the Panel later this month. Since the issue of Darfur relates to complex historical, sociocultural, economic and political concerns, the international community should take a comprehensive approach to seeking an inclusive and multilateral solution.

The Security Council needs to address comprehensively the issue of impunity and justice, the humanitarian and security situation, the deployment of the African Union-United Nations Hybrid Operation in Darfur and the peace process, including general elections. At the same time, justice cannot be

compromised. To promote durable peace, it is essential to strengthen the justice system in the Sudan. We would like to encourage the Government of the Sudan to take steps to that end.

The Rome Statute represents a milestone in the development of international criminal justice. The ICC was established based on the strong will and firm belief of the international community that the most serious crimes of international concern should not go unpunished. The ICC functions most effectively when it is universally respected and when all States extend their full cooperation to the Court. Japan urges all States to cooperate with the ICC and to join hands in the effort to universalize the Rome Statute.

The Security Council has the responsibility to monitor the situation closely and to continue to make efforts to ensure that the Government of the Sudan and all other concerned parties fully cooperate with and provide assistance to the ICC, in accordance with resolution 1593 (2005). Japan is committed to seeking a way forward in close consultation with the concerned States and international and regional partners.

**Mr. Liu Zhenmin** (China) (*spoke in Chinese*): I once again welcome Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court, to the Security Council to brief us on the progress in fighting impunity in Darfur.

Over the past several years, the Security Council has considered the question of Darfur in the Sudan many times. During those considerations, the Chinese delegation has always emphasized the viewpoint that the Darfur issue involves a political process, peacekeeping deployment, economic development, humanitarian assistance and justice. It is very complex and requires tremendous political wisdom to find a comprehensive solution that ensures that peace and justice are achieved.

Fostering early and substantive progress in the political process in Darfur is a key precondition of and important guarantee for progress in all areas. Earlier this week, the Security Council heard briefings by the Department of Peacekeeping Operations and the Joint African Union-United Nations Chief Mediator for Darfur on the latest developments in Darfur (see S/PV.6227). Judging from their briefings, peacekeeping deployment continues to progress and the Mission is 75 per cent deployed.

A conference to launch the Darfur comprehensive peace talks was held in Doha, Qatar. Many representatives from all parties, including many members of the Security Council, attended the meeting. There is hope that the negotiations between the Government and the rebel movements will be relaunched within the year. Civil society representatives have also been invited to attend the Doha process, further broadening the social basis for the political process in Darfur.

Humanitarian work continues to progress steadily and there has been a marked improvement in the relations between the Sudan and Chad. Recently, there has been an active effort by all parties to create favourable conditions and an environment conducive to the smooth participation of the people of Darfur in next year's January elections.

That represents hard-won progress. One important reason is the political mutual trust and positive interaction of all parties. The tripartite mechanism of the United Nations, the African Union (AU) and the Sudanese Government is operating smoothly, and that is a key factor in ensuring progress in deployment.

The concern of the Sudanese Government and civil society over their national future and destiny is the inner drive for the political negotiations to forge momentum. The African countries' worry over peace and security in the Sudan and its subregion is the common impetus for the international community's promotion of a genuine solution to the Darfur issue. All of this points to the fact that trust is the basis for cooperation, and that cooperation is the important precondition for resolving all questions and diffusing all misunderstandings and differences. Similarly, questions of impunity cannot be addressed without the trust and cooperation of all parties concerned.

The AU is an important strategic partner for the United Nations in settling the question of the Sudan. Not long ago, the African Union high-level panel on Darfur, led by former President Mbeki, submitted an important report with recommendations on the format of cooperation to achieve peace and reconciliation and to address impunity. We note that the AU Peace and Security Council has approved the Mbeki report. An AU high-level delegation will come to New York later this month to brief the Council on that report. We look forward to the Security Council's in-depth exchange of views with the AU on certain questions. We also hope that

Prosecutor Moreno-Ocampo will continue to follow the latest developments in all areas connected with Darfur, maintain close communications with all parties, objectively review the latest developments and various challenges on the Darfur question, and contribute to the comprehensive and proper settlement of the Darfur issue.

**Mr. Urbina** (Costa Rica) (*spoke in Spanish*): I should like to begin by welcoming Prosecutor Moreno-Ocampo and thanking him for his work, for which Costa Rica is always grateful.

The Prosecutor's presentation of the tenth report of the International Criminal Court to the Security Council is an opportunity to advocate respect for the United Nations Charter. This basic obligation cannot be flouted by States without their suffering the consequences of their anti-juridical conduct. It is well known that any State that has joined this Organization is committed to accepting its obligations under the Charter. Therefore, when, on 12 November 1956, the Republic of the Sudan became a Member of the United Nations, it solemnly committed to respect the obligations imposed by the Charter, including its obligation under Article 25 to accept and comply with Security Council decisions.

Five years ago, this Council decided that the Government of the Sudan should cooperate fully with the International Criminal Court regarding crimes committed in Darfur. To date, the cooperation of the Government of the Sudan has been non-existent. In June 2008, in a presidential statement initiated by Costa Rica(S/PRST/2008/21), the Council once again reiterated its demand for cooperation. That has been the only action taken by the Council in this matter since the adoption of resolution 1593 (2005). However, the Government of Sudan has ignored the decisions of this Council and fails to honour its obligations under the Charter, without any consequence whatever.

It is not true that the Government of the Sudan is not required to cooperate with the International Criminal Court because it is not party to the Rome Statute. What obliges the Government of the Sudan to cooperate with the International Criminal Court is not the Statute of Rome but its membership in the United Nations and its obligation to comply with the decisions of this Council, including resolution 1593 (2005). Non-compliance with obligations under the Charter should have consequences for any Member State, and the Sudan should be no exception.

This Council should not fool itself. The damage caused by the anti-juridical conduct of the Government of the Sudan is neither negligible nor limited to merely legal technicalities. This Council, by its tolerant attitude towards that Government, has contributed to eroding trust in international justice and has defended impunity. Meanwhile in Darfur, indiscriminate attacks against the civilian population continue, sexual violence continues to be used as a weapon of war and a means of intimidation, and the recruitment and non-demobilization of child soldiers persist. All of those crimes have their roots in impunity.

Referring the situation in Darfur to the International Criminal Court does not in itself exonerate the international community from its obligation to demand accountability for the genocide in Darfur, nor has it been an effective instrument in countering impunity for the crimes that have been and continue to be committed in that region of the Sudan. The intervention of the International Criminal Court is only a sign of the need for greater commitment, as the Prosecutor pointed out. The intervention of the Court is must be a catalyst for decisive national and international action in response to challenges to justice in situations of conflict.

Instead of taking such decisive action, some time ago the Government of the Sudan set up tribunals, prosecutors, committees and administrative units in an effort to show some will to carry out justice and combat impunity. To date, the result is that the Sudanese indicted by the Court have not been brought to justice and continue to occupy important positions in the apparatus of the Sudanese State. The exception is a Sudanese opponent to the Government who has appeared voluntarily before the Court.

The international community has been much more consistent in promoting justice, combating impunity and working towards sustainable peace. The League of Arab States has made steps towards accountability, and in mid-2008 the African Union set up a high-level panel on Darfur, presided over by former President Thabo Mbeki, to consider the interlinked matters of combating impunity and promoting peace and reconciliation. The panel's report, which will be discussed by this Council in the near future, was unanimously adopted in October. Its recommendations mark the way forward.

Costa Rica welcomes the decisive stance of the African States that have implemented the commitment to comply with their obligations under the Rome Statute, and regrets the inaction of this Council, which for 18 months has failed to achieve the necessary consensus to secure the implementation of its own decisions.

An analysis of the information provided by the Prosecutor raises other concerns that should not be ignored. The international community should take an interest in the protection of witnesses. It should also carefully consider the repercussions of the expulsion of the humanitarian organizations that worked in Darfur and the so-called Sudanization of assistance. Taken together, those situations have had an enormous impact on the lives of displaced persons living in camps, including on their most basic rights. They have also resulted in forced returns to unsafe areas, engendered intimidation, provided cover for new crimes and fostered impunity.

Concerns about the harassment of, and attacks on, humanitarian personnel, and the deaths of many of them, cannot just mean figures on a page. They should lead to a more decisive stance on the part of the international community, in particular the Security Council.

**Mr. Mayr-Harting** (Austria): At the outset, I would like to thank Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for the presentation of his tenth report pursuant to resolution 1593 (2005), by which the Security Council referred the situation in Darfur to the ICC. Austria is a long-standing advocate of the rule of law and the fight against impunity and is a strong supporter of the ICC.

In its resolution 1894 (2009), on the protection of civilians in situations of armed conflict, which was adopted last month, the Security Council once again affirmed its strong opposition to impunity for serious violations of international humanitarian law and human rights and drew attention to the full range of justice and reconciliation mechanisms, including international and mixed criminal courts and tribunals. The Council also recalled the inclusion of war crimes, crimes against humanity and genocide in the statutes of ad hoc tribunals and the Rome Statute of the ICC, and emphasized in that regard the principle of complementarity.

Since the last report of the Prosecutor, in June, the Court has continued to work on the Darfur situation. In a positive development, to which other delegations have already referred, rebel leader Abu Garda, who is suspected of responsibility for the Haskanita attacks against African Union forces, once again voluntarily appeared before the Court for a confirmation-of-charges hearing, in October.

More than four years have passed since the adoption of resolution 1593 (2005). We recall the presidential statement of 16 June 2008 (S/PRST/2008/21), which urged the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with resolution 1593 (2005). The European Union has also issued a number of clear statements in that regard. On 15 September, the Council of the European Union underlined that impunity for international crimes can never be accepted, reiterated its support for the ICC and called upon the Government of the Sudan to cooperate fully with the Court, in accordance with its obligations under international law.

We remain deeply concerned about the dire humanitarian situation and the violence in the region. Notwithstanding the efforts by the United Nations Office for the Coordination of Humanitarian Affairs and others, we have still not been able to overcome the negative consequences of the expulsion of non-governmental organizations in March 2009. The United Nations and other international actors, including the European Union, have repeated their calls on the Sudanese Government and all other parties to the conflict to ensure, in accordance with their international obligation, that humanitarian assistance reaches the most vulnerable people in the Sudan.

In October, the High-Level Panel on Darfur, led by former President Thabo Mbeki, first presented its report on Darfur, entitled "The quest for peace, justice and reconciliation" (S/2009/599, annex I), which was endorsed by the Peace and Security Council of the African Union. We commend the efforts of the High-Level Panel. We welcome the wide consultations undertaken by the Panel in the preparation of the report. We also welcome its interaction with the Prosecutor of the ICC.

The High-Level Panel's report sets out a number of recommendations to promote justice and reconciliation in Darfur, including proposals to expand and strengthen the system of the Sudan's special courts to deal with crimes committed in the conflict in Darfur,

to establish a hybrid court for the most serious crimes and to establish a truth, justice and reconciliation commission. Austria looks forward to the presentation of the report by President Mbeki in the Security Council later this month. That will give us a chance to learn more about envisaged steps and measures to implement the Panel's recommendations and their practical implications. We believe that measures to ensure accountability will be fundamental to achieving lasting peace and reconciliation in Darfur and in the Sudan as a whole. We welcome and support all efforts that contribute to that end.

Austria encourages continued dialogue and diplomatic efforts among the Court, the African Union and the League of Arab States in order to ensure broad support for the Court in its aim to promote the rule of law, protect human rights and combat impunity within the framework provided by the Rome Statute. Austria is convinced that peace and justice are in no way contradictory goals, but rather mutually reinforcing imperatives. It is our joint responsibility to address both.

**Mr. Apakan** (Turkey): Let me first thank Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his briefing. While not a State party to the Rome Statute, Turkey fully shares the ideals and principles that gave rise to the International Criminal Court. The need to fight impunity and promote justice, especially in countries emerging from conflict, is as evident today as it ever was.

Turkey believes that in the years to come the ICC will have an important and complementary role to play in efforts to fight impunity with regard to the most serious of crimes. On the other hand, it is a relatively new feature of international law. In the light of recent experiences, it is also clear that the Court will continue to face some serious challenges.

Over the course of the past 12 months, the process initiated by resolution 1593 (2005) reached critical mass. Starting in January, we witnessed a series of negative events based on causes that inadvertently had an impact on the lives of countless innocent people and further complicated an already difficult situation. As we approach 2010, we are glad to see that the turbulence of 2009 is behind us.

As we have stated before, Turkey continues to believe that the implementation of resolution 1593 (2005) cannot, and must not, be decoupled or pursued in isolation from the wider framework of the search for lasting peace and stability in Darfur. The implementation of that resolution is not an end in itself. In order to have meaning, it must be part of a broader framework that combines all the necessary elements for peace to take root. In that context, finding a sustainable political settlement that takes into account the root causes of the conflict, addressing the humanitarian situation in a forward-looking and results-oriented manner and promoting broad-based reconciliation and meaningful justice for Darfuris are all vital and mutually reinforcing goals that need to be pursued together in Darfur.

Turkey believes that progress in all those areas is possible, given time and provided that the right framework is in place. On the other hand, placing undue emphasis on just one of those goals risks undermining progress in others. As experiences elsewhere in Africa have clearly shown, there can be no real justice or reconciliation without peace and an enabling political framework.

With regard to Darfur, Turkey also places importance on building and maintaining a regional approach that considers the many sensitive dynamics at play. The African Union, the Arab League and the Organization of the Islamic Conference, as well as neighbouring countries, all have different yet crucial roles to play, as does the Doha process, where tangible progress in the near term is going to be absolutely vital.

Turkey welcomes the report of the African Union High-level Panel on Darfur (S/2009/599, annex I), led by His Excellency Mr. Thabo Mbeki. The report contains some important insights on and critical analyses of the challenges not only in Darfur but in the Sudan in general. It also has some stern warnings that must be taken very seriously. Turkey also welcomes the report's concrete recommendations, which we believe are well thought out and specifically tailored to the problems at hand.

In moving forward, we call on all parties involved to take those recommendations as a point of reference and to make best use of this report. Turkey continues to believe that a peaceful settlement in Darfur through political dialogue is possible. The alternative and its potential fallout carry enormous risks, not only for the region but also for international peace and security.

While there can be no quick fixes, a just and viable political settlement that addresses all of the rational grievances and expectations of the legitimate parties involved can also open a path to meaningful reconciliation and justice for all Sudanese people, including the people of Darfur. In working towards that goal, it will be crucial to keep the bigger picture in focus and refrain from steps that could further aggravate the already complex situation.

**Mr. Vilović** (Croatia): Allow me to join others in welcoming Prosecutor Moreno-Ocampo to the Chamber again. I also thank him for presenting his tenth report submitted pursuant to resolution 1593 (2005), updating the Council on the judicial and investigative activities of the International Criminal Court (ICC) relating to the Darfur situation. It is a situation of continuing instability, criminal activity and lawlessness, where civilians and displaced persons continue to suffer and where stress on humanitarian operations has been compounded by the erosion of humanitarian principles.

My delegation reiterates its serious concern about the ongoing lack of cooperation by the Government of the Sudan with the ICC Prosecutor. The arrest warrants issued by the Court remain unfulfilled. The Sudanese Government, led by President Al-Bashir, continues with its policy of contempt towards the victims of the conflict in Darfur and has invested no credible efforts to end impunity for crimes committed.

The messages contained in resolution 1593 (2005) and the presidential statement of 16 June 2008 (S/PRST/2008/21) remain clear and relevant. The Government of the Sudan and all other parties to the conflict should fully cooperate with the Court and provide any necessary assistance to the ICC and the Prosecutor.

In that context, we welcome the voluntary appearance before the ICC of the indictee in the Haskanita trial. We take note of the Juba declaration of September and hope it will mobilize other parties to cooperate with the Court.

My delegation welcomes the focus of regional organizations, notably the Arab League and the African Union, on efforts to close the impunity gap in Darfur while addressing peace and justice, promoting accountability and strengthening national capacities for combating impunity. We especially welcome the report of the African Union High-Level Panel on Darfur (S/2009/599, annex I) and its recommendations. We hope that the measures it proposes will be met by meaningful response from the Sudanese side in order to put an end to impunity and enable healing and reconciliation. We look forward to hearing more from the Panel in the Council soon.

The principle of complementarity is of paramount importance for the international criminal justice system. Regrettably, the Sudan has yet to offer a credible domestic alternative to the jurisdiction of the ICC. As the Prosecutor's report notes, there have been no developments in that regard during the reporting period.

My delegation welcomes the increasing international and regional efforts to promote dialogue and to reactivate the political process, focusing on both peace in Darfur and implementation of the Comprehensive Peace Agreement in order to achieve the overall objective of sustainable peace and stability in the Sudan. Having said that, my delegation also believes that it is vital to preserve respect for the independent judicial mandate of the ICC and its Prosecutor.

Last month, the Security Council reaffirmed its resolve to strengthen the protection of civilians in armed conflict and reaffirmed its strong opposition to impunity for serious violations of international humanitarian law and human rights law, emphasizing the responsibility of States to comply with their relevant obligations and end impunity. It would be misleading to see those goals as incompatible with the wider objective of maintaining international peace and security. The ICC has a clear complementary role in that regard. Croatia will continue to fully and unequivocally support the activities of the Prosecutor in carrying out the mandate under resolution 1593 (2005), as well as the role of the ICC in general.

**Mr. Rugunda** (Uganda): We thank Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his report and for his comprehensive briefing.

The establishment of the African Union Panel of eminent persons, headed by President Mbeki, and the submission of their report of findings and recommendations on 8 October in Abuja are major developments since the Prosecutor gave his report and briefing in June (see S/PV.6135). We commend the cooperation of the Panel and the ICC while carrying out their mandate.

President Mbeki's panel submitted recommendations on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could effectively and comprehensively be achieved, thus upholding justice by combating impunity while contributing to ensuring peace, stability and security in the Sudan.

Uganda warmly welcomes and supports the recommendations in the Mbeki report calling for the establishment of a hybrid court that should exercise original and appellate jurisdiction over individuals who bear responsibility for the gravest crimes committed during the conflict in Darfur. We urge the Government of the Sudan to establish the hybrid court.

The Panel further recommends that such courts be constituted by Sudanese judges and those of other nationalities. Such measures would respect the independent judicial mandate of the ICC and would allow independent domestic jurisdiction in the Sudan. That would strengthen judicial institutions in the Sudan to handle past, present and future violations that constitute the most serious crimes of concern to the international community. We believe that the Mbeki report presents us with a good basis on which to resolve the outstanding impasse between the Sudan and the ICC.

Uganda believes that ending impunity is the only credible deterrent against crimes of the most serious concern to the international community. We attach great important to the delivery of justice and the fight against impunity. Nonetheless, it is important to take into account the need to resolve conflicts in a manner that would not drive us back to anarchy. It is therefore important to take into account that the particular circumstances of each individual situation. We are convinced that the Mbeki findings and recommendations have taken into account the concrete situation on the ground in Darfur, in the Sudan and in Africa.

Uganda remains concerned about the humanitarian situation in Darfur. There is not enough food assistance. Health services and facilities remain inadequate. Water supply and sanitation support remain insufficient. We commend all the United Nations agencies and other donors that have scaled up their activities to alleviate the suffering of the people of Darfur. We are also concerned about reports of sexual violence, which continues in and around the camps in Darfur, and about reports of continued recruitment of child soldiers. We call on the Government of the Sudan to take appropriate measures to ensure that those incidents are stopped and that the perpetrators of those crimes are brought to justice.

Finally, we call on the Security Council to support the recommendations of the Mbeki report. The Mbeki report and its recommendations provide a practical and realistic way forward for accountability, reconciliation and lasting peace in Darfur.

**Mr. Le Luong Minh** (Viet Nam): My delegation takes note of the tenth report of the Prosecutor of the International Criminal Court (ICC) to the Security Council pursuant to resolution 1593 (2005). And I thank Mr. Luis Moreno-Ocampo for his briefing to the Council.

Viet Nam has always maintained that the perpetrators of the most serious crimes — such as genocide, war crimes, crimes of aggression and crimes against humanity — must be brought to justice. In the fight against such heinous crimes, we recognize and support the role and contributions of the international criminal tribunals. At the same time, we consider that, as those tribunals are courts of last resort, it is essential to respect the primary role of national jurisdictions and to render capacity-building assistance to national judiciaries, as necessary, in order to enable them to take up their judicial responsibilities.

Viet Nam is concerned about the deteriorating humanitarian conditions in Darfur and the alleged commission of serious crimes against civilians. We support the efforts of the African Union (AU) to engage with the Sudanese Government in deploying the seven-track solution package to achieve peace, security and reconciliation in Darfur. We welcome the creation of the African Union High-Level Panel on Darfur, composed of independent African individuals, whose mandate is to address the interlinked issues of combating impunity and promoting peace and reconciliation. The High-Level Panel's report (S/2009/599, annex I), adopted by the AU Peace and Security Council, stresses the need to strengthen the Sudan's national legal system, to deal appropriately with the perpetrators of crimes, and to make reparations to the victims inside the Sudan. We note the ICC Prosecutor's efforts to cooperate with the AU High-Level Panel, and we encourage his further

cooperation with the AU high-level implementation panel aimed at achieving the above-mentioned objective.

While we reaffirm the need for all parties to the armed conflict in Darfur to implement Security Council resolution 1593 (2005), Viet Nam supports responsible actions by the Council that take into account the concern and positions of its very important regional peace and security partners.

**Mr. Dabbashi** (Libyan Arab Jamahiriya) (*spoke in Arabic*): We listened attentively to the briefing by Mr. Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC). Libya follows with great attention the situation in Darfur, based on its eagerness to achieve peace and justice, and has participated actively in efforts aimed at the achievement of peace, stability and justice in Darfur. Libya coordinates its efforts with the African Union-United Nations Chief Mediator for Darfur, Mr. Djibril Bassolé, and with the Government of Qatar, as well as with other regional Arab and African efforts. We do this with a view to bringing all parties together at the negotiating table in order to achieve a permanent settlement of the conflict and to put an end to the human suffering in Darfur.

Libya hopes that the members of this Council will realize that there is no alternative to an active political process that must take highest priority in order to foster circumstances conducive to stability and security, and to establish justice and national reconciliation in Darfur.

The measures adopted by the Prosecutor come under the framework of Security Council resolution 1593 (2005), which referred the situation in Darfur to the Prosecutor of the International Criminal Court. The resolution raised a great number of objections both within and outside the Council. A significant number of Council members abstained from voting on that resolution, and there are still questions circulating around the purpose of issuing a resolution on Darfur while the Council remains silent on other areas where civilians are being killed by the most ferocious weapons and where, up to this very moment, systemic impunity is condoned before the eyes of the world.

The Gaza Strip and Afghanistan are testament to that. Those who today speak about the realization of justice and ending impunity in the Sudan are the very same who opposed even discussion in the Security Council of the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48), known as the Goldstone report, concerning the war crimes and crimes against humanity committed against Palestinian civilians by the occupying Israeli forces. That makes the International Criminal Court nothing more than a tool manipulated by certain countries to further their policies. Regrettably, the Prosecutor appears to be the executor of the policies of those countries.

As we all know, the Sudan is not party to the Rome Statute and is therefore not bound by the resolutions of the International Criminal Court. Even resolution 1593 (2005), which Mr. Moreno-Ocampo and others use as a fall-back, is not binding on the Government of the Sudan because it clearly affirms in paragraph 2 that "that States not party to the Rome Statute have no obligation under the Statute", although it also "urges all States and concerned regional and other international organizations to cooperate fully". As indicated in the advisory opinion that the Secretariat's Office of Legal Affairs circulated to the press a few months ago, from a legal perspective the term "urges" is not binding. I do not believe that Mr. Moreno-Ocampo and certain delegations present are better equipped to interpret United Nations resolutions than the Office of Legal Affairs.

Paragraphs 62 and 63 of Mr. Moreno-Ocampo's report contain clear falsifications of the Security Council's pronouncements in a resolution and a presidential statement. The Prosecutor is mandated to work within the framework of a jurisdiction established under professional principles and free of selectivity, incitement and threats. He is expected to refrain from making and repeating accusations and allegations through press campaigns that go so far as to describe a head of State as a fugitive from justice when that individual is participating in summit meetings seeking to resolve the conflict and to establish peace in his country.

In that respect, the report before us, especially in paragraph 66 — which is intended to indicate the support enjoyed by the International Criminal Court — clearly reveals how limited that support is. That paragraph notes that "[d]uring the general debate in the General Assembly in October, 56 States emphasized the importance of cooperation with the Court including in relation to arrests". This statement plainly shows that more than two thirds of Member States do not in

fact support the steps and measures taken by the Prosecutor in his dealings with the Sudan.

Although the report of the Prosecutor clearly indicates in paragraph 67 that "African States parties to the Rome Statute" — totalling 37 States — "have affirmed ... their position as African Union members that the Security Council should consider a deferral of the Darfur investigation", the Prosecutor has ignored that request, as the report reveals in subsequent paragraphs, particularly paragraph 69, which focuses on the Prosecutor's contacts with African States but does not detail the outcomes of those contacts. That is obviously because the States in question have rejected his measures.

Also surprising is the absence of any objective and practical vision behind the Prosecutor's measures and positions. He requested that an arrest warrant be issued against President Omar Al-Bashir at a time when efforts were being made to deploy the African Union-United Nations Hybrid Operation in Darfur and to advance the peace process. On 4 March, he urged the issuance of arrest warrants against State officials, provoking popular outrage and undermining hopes for peace and stability.

Regrettably, he did so in utter disregard for the realities of the Sudan and its current sensitive and complex circumstances. For instance, the implementation of the Comprehensive Peace Agreement between the North and South is now at a critical phase as elections, an important referendum and deadlines for resolving other outstanding issues are looming. At the same time, we hear reports of violent tribal conflicts over sources of livelihood in the South. In Darfur itself, the humanitarian and security situation has been affected by the Prosecutor's actions, and incidents against humanitarian assistance and peacekeeping operations are on the increase.

The Prosecutor has actively escalated his accusations and marginalized the constructive efforts and positions of the forces, parties and organizations that have direct knowledge of the situation on the ground and its repercussions in Darfur. He has ignored several resolutions and statements that have been reissued as official documents of the Security Council after having been issued by important regional organizations representing more than two thirds of the States Members of the United Nations, including the African Union — the Organization's principal partner in Darfur — the League of Arab States, the Organization of the Islamic Conference and the Non-Aligned Movement. The Security Council operates on behalf of those States, while the United Nations Charter recognizes the importance of regional arrangements in achieving the pacific settlement of disputes and specifically mandates the Council to encourage their role in that respect.

In this regard, I recall the following African Union resolution, in which the Peace and Security Council expressed its conviction that,

> "in view of the delicate nature of the processes underway in the Sudan, approval by the Pre-Trial Chamber of the application by the ICC Prosecutor could seriously undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur and the promotion of long-lasting peace and reconciliation in the Sudan" (*S/2008/481, annex, para. 9*).

The Peace and Security Council reiterated its call on the Security Council, "in accordance with the provisions of Article 16 of the Rome Statute of the International Criminal Court, to defer the process initiated by the Court" (*ibid., para. 11*).

In addition to the statements issued by the African Union, the United Nations principal partner in the hybrid operation in Darfur, other regional organizations — including the Organization of the Islamic Conference, the League of Arab States and the Non-Aligned Movement — have outlined similar positions in a series of statements and resolutions on this matter. In his briefing on 27 April, Mr. Rodolphe Adada, Joint African Union-United Nations Special Representative for Darfur and head of the African Union-United Nations Hybrid Operation in Darfur, told the Council:

> "The ICC issue has dominated and polarized Sudanese political life. It has weakened the position of those in the Sudan who have been working for compromise and consensus and has encouraged militant sentiment ..." (*S/PV.6112, p. 2*).

As members know, Mr. Adada's views about the improved situation in Darfur did not please certain members of the Council and he was forced under pressure to leave his post.

It is unquestionable that peace and justice are indivisible. But how can we achieve justice, especially in a society exhausted by conflict and numerous humanitarian tragedies? It can be done only through a political process and by seriously and comprehensively addressing both the conflict's underlying causes and its effects. That is the lesson we learn from history, and it is the only way to achieve national reconciliation, security and stability, and to ensure respect for the sovereignty of a State Member of the United Nations. These are the objective conditions for establishing justice and reconciliation.

That has been the basis of the positions and resolutions of the African Union on this matter, which were not motivated by any desire to overlook or ignore the conditions needed for establishing justice in Darfur, but rather by the determination to create those conditions by bringing about security and political stability. In that regard, we recall the report of the African Union High-level Panel on Darfur (S/2009/599, annex I) chaired by former President Thabo Mbeki of South Africa, which was adopted by the Peace and Security Council of the African Union on 29 October. Libya highly appreciates the Panel's efforts, and we hope that the Council will discuss its recommendations objectively and positively, bearing in mind the requirements of simultaneously ensuring peace, justice and reconciliation, including by providing redress for the victims of the Darfur conflict and helping meet the desire of the people of the Sudan to live in lasting peace and stability so that they can dedicate themselves to development, progress and prosperity.

It is time to undo the negative effects of the ICC's measures and return to the spirit of the Rome Statute by activating its article 16, which gives us the authority to defer investigations or prosecutions. That is what is required to maintain peace and security, especially in the light of the African Union High-level Panel's recommendations. The Security Council's failure to apply article 16 of the Rome Statute, despite a number of requests that this be done, affects its credibility. The negative ramifications of implementing article 13 (b) require that we activate the other provisions and defer pending legal steps.

That is necessary in order to create a climate conducive to comprehensive solutions ensuring stability and justice in the Sudan. That is the hope of my country, whose Leader has the honour of Chairing the African Union. It is also the hope of more than two thirds of the Members of the United Nations, which are represented in the relevant international and regional organizations. All of them are continuing their noble efforts on all tracks; we have no doubt that those efforts will be effective in achieving peace, stability and justice in the Sudan.

**The President** (*spoke in French*): I shall now make a statement in my capacity as the representative of Burkina Faso.

I thank Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC), for his briefing.

My delegation regrets that, in spite of the significant efforts of the entire international community, peace has not yet returned to Darfur. Civilians, humanitarian and peacekeeping personnel, refugees and displaced persons continue to face daily violence. Since 1 June 2005, the Office of the Prosecutor of the ICC has initiated three major cases related to the conflict in Darfur. Burkina Faso reaffirms its confidence in an independent international system of criminal justice and acknowledges that the ICC prosecutions were initiated pursuant to Council resolution 1593 (2005).

Yet, like many other members of the international community which belong to the African Union, the League of Arab States, the Organization of the Islamic Conference and the Non-Aligned Movement, my country is concerned by the impact of the arrest warrant issued against President Al-Bashir. Indeed, although it is true that combating impunity is a vital element in the restoration of lasting peace to Darfur and to the Sudan in general, it is also true that, in the absence of a consensus political solution, attaining the objective of justice cannot alone bring peace in such a complex conflict. Hence, it is crucial to take advantage of opportunities to bring about political normalization and thus to make decisive strides towards peace, which is a common objective of Security Council resolutions and the relevant decisions of African Union bodies.

We therefore continue to believe that the issuance of that arrest warrant can only further complicate the peace process and the efforts of the Security Council and the African Union. As we have always stressed, that position implies no value judgement on the substance of the issue; it is an firm invitation to give both justice and the political process a chance. We continue to believe that peace can return to Darfur, especially in the light of the 30 November briefing by the Joint African Union-United Nations Chief Mediator

for Darfur (see S/PV.6227), whom we fully support, on the next stages of the political negotiations, and in the light of the important report of the African Union High-Level Panel on Darfur, chaired by President Thabo Mbeki (S/2009/599, annex I). We shall have an opportunity to consider that report later this month. We also welcome the positive cooperation between those two entities and between them and the ICC Prosecutor.

Finally, we appeal once again to the parties to strictly respect the lives of civilians and humanitarian and peacekeeping personnel and to provide unimpeded humanitarian access to all populations.

I now resume my functions as President of the Security Council.

There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

*The meeting rose at 12.20 p.m.*

United Nations S PV.6231

# Security Council

Distr.: General
7 December 2009

Original: English

## Official communiqué of the 6231st (closed) meeting of the Security Council

### Held in private at Headquarters, New York, on Monday, 7 December 2009, at 10.10 a.m.

In accordance with rule 55 of the provisional rules of procedure of the Security Council, the following communiqué was issued through the Secretary-General in place of a verbatim record:

"On 7 December 2009, the Security Council, pursuant to annex II, sections A and B of resolution 1353 (2001), held its 6231st meeting in private with the troop-contributing countries to the United Nations Peacekeeping Force in Cyprus.

"The Security Council and the troop-contributing countries heard a briefing under rule 39 of its provisional rules of procedure by Mr. Tayé-Brook Zerihoun, Special Representative of the Secretary-General and Head of the United Nations Peacekeeping Force in Cyprus."

09-63752 (E) 071209

Please recycle

United Nations S PV.6232

# Security Council

Distr.: General
7 December 2009

Original: English

## Official communiqué of the 6232nd (closed) meeting of the Security Council

### Held in private at Headquarters, New York, on Monday, 7 December 2009, at 11 a.m.

In accordance with rule 55 of the provisional rules of procedure of the Security Council, the following communiqué was issued through the Secretary-General in place of a verbatim record:

"On 7 December 2009, the Security Council, pursuant to annex II, sections A and B of resolution 1353 (2001), held its 6232nd meeting in private with the troop-contributing countries to the United Nations Disengagement Observer Force.

"The Security Council and the troop-contributing countries heard a briefing under rule 39 of its provisional rules of procedure by Ms. Nina Lahoud, Officer-in-Charge of the Asia and Middle East Division of the Department of Peacekeeping Operations.

"Members of the Council, Ms. Lahoud and representatives of participating troop-contributing countries had an exchange of views."

09-63758 (E) 071209

Please recycle